

CITY COUNCIL  
ATLANTA, GEORGIA

A RESOLUTION

BY: 

01-R-0973

**A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A DEVELOPMENT AGREEMENT WITH THE ATLANTA DEVELOPMENT AUTHORITY AND ATLANTIC STATION, L.L.C. FOR THE PURPOSE OF IMPLEMENTING THE ATLANTIC STEEL REDEVELOPMENT PLAN AND TAX ALLOCATION DISTRICT; AND FOR OTHER PURPOSES.**

**WHEREAS**, the City of Atlanta and the Mayor desire to create partnerships with private entities for the purpose of redeveloping the City and improving the quality of life for its residents so as to provide greater housing, employment, and recreational opportunities; and

**WHEREAS**, the Developer, Atlantic Station, L.L.C., is the owner of a one hundred thirty-eight (138) acre abandoned industrial site located in the City of Atlanta, Georgia, which is commonly referred to as "Atlantic Station" (the "*Property*"); and

**WHEREAS**, in order to encourage to the development of this economically and socially depressed area, the City Council of the City of Atlanta (i) created a tax allocation district known as the Atlantic Steel TAD which consists of the Property and certain areas immediately surrounding the Property (the "*Atlantic Steel TAD*") pursuant to the authority granted to the City of Atlanta under the Redevelopment Powers Law set forth at O.C.G.A. Section 36-44-1, et seq. (the "*Act*") and (ii) adopted the Atlantic Steel Brownfield Redevelopment Plan and Tax Allocation District (the "*Redevelopment Plan*") by Resolution 99-R-1344 adopted by the Council on October 4, 1999, and approved by the Mayor on October 5, 1999; and

**WHEREAS**, the City Council of the City of Atlanta by Ordinance 01-0-0223 adopted on February 19, 2001, consented to the inclusion of property tax increments and tax revenues generated by local option sales taxes derived from the Atlantic Steel TAD as further security for the TAD Bonds (the "*Local Option Sales Tax Increments*"; and



**WHEREAS**, as further security for the TAD Bonds, the Developer will pledge a letter of credit to pay a portion of the principal and interest on the TAD Bonds in the event that the TAD Tax Increments, the Fulton County Tax Increments and the Local Option Sales Tax Increments are insufficient to pay for principal of and interest on the TAD Bonds; and

**WHEREAS**, the City Council of the City of Atlanta, by Ordinance 01-0-0223 adopted on February 19, 2001, created a special tax district which consists of the Property and certain areas immediately surrounding the Property (the "*Atlantic Station Special District*") and;

**WHEREAS**, the City of Atlanta desires to enter into a Special Assessment Undertaking with the Atlanta Development Authority (the "Authority") to be pledged by the Authority as additional security for the TAD Bonds; and

**WHEREAS**, the City will agree to levy a Special District Tax in the Special Tax District under certain conditions set forth in the Agreement are satisfied (the "*Special Tax Assessments*"); and

**WHEREAS**, the Authority and the City desire that the proceeds of the Tax Allocation Bonds be used to finance the construction of certain improvements associated with the redevelopment of the Property; and

**WHEREAS**, the City of Atlanta has appointed the Authority as its agent and authorized representative for the purpose of implementing certain redevelopment initiatives set forth in the Redevelopment Plan; and

**WHEREAS**, the Authority, the City and the Developer desire to enter into a Development Agreement to set forth the respective duties, responsibilities and obligations of each party and the procedures for the design, development, construction and financing of the Project; and



**WHEREAS**, a contractual development agreement to memorialize these commitments is needed.

**THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY RESOLVES** as follows:

Section 1. The Mayor is authorized to execute an agreement with Atlantic Station, L.L.C., the City of Atlanta, and the Atlanta Development Authority (which shall be known as "the Development Agreement") whereby Atlantic Station, L.L.C. shall develop a mixed use development on the Property which is intended to provide a framework for a "pedestrian-friendly" "urban village" while facilitating the environmental remediation of the Property.

Section 2. The City Attorney shall prepare an appropriate contractual agreement for execution by the Mayor, to be approved by the City Attorney as to form.

Section 3. Said agreement shall not become binding on the City, and the City shall not incur any liability thereunder, until the agreement has been signed by the Developer, and Atlanta Development Authority, and then signed by the Mayor, and delivered to Atlantic Station, L.L.C.

A true copy,

*Rhonda Daughin Johnson*  
Municipal Clerk, CMC

**ADOPTED** by the Council  
**APPROVED** by the Mayor

JUL 16, 2001  
JUL 24, 2001

**DEVELOPMENT AGREEMENT\***

**by and among**

**THE CITY OF ATLANTA, GEORGIA,**

**ATLANTA DEVELOPMENT AUTHORITY,**

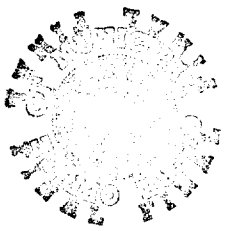
**DOWNTOWN DEVELOPMENT AUTHORITY,**

**and**

**ATLANTIC STATION, L.L.C.**

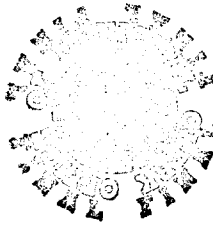
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\* This agreement is presented for discussion purposes only, and is subject to change based upon review from the City of Atlanta, the Atlanta Development Authority and others.

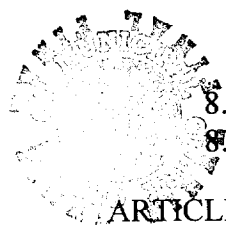


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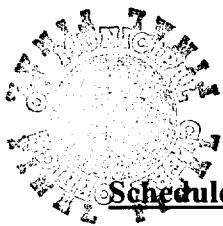
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## LIST OF SCHEDULES AND EXHIBITS

### **Schedules:**

Schedule 1.1	Infrastructure Milestones
Schedule 2.1	Contracts with Vertical Developers
Schedule 4.5	Affordable Housing
Schedule 4.8	MBE/FBE Program
Schedule 5.1	Master Plan
Schedule 5.2	Project Budget
Schedule 5.3	Construction Schedule
Schedule 9.4	Exceptions to Representations and Warranties of Developer

### **Exhibits:**

Exhibit A	Property
Exhibit B	Master Declaration
Exhibit C	Terms of TAD Bonds
Exhibit D	Environmental Reports



## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "*Agreement*") is entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2001, by and among CITY OF ATLANTA, GEORGIA, a municipal corporation of the State of Georgia (the "*City*"), ATLANTA DEVELOPMENT AUTHORITY, a public body corporate and politic of the State of Georgia (the "*Authority*"), the DOWNTOWN DEVELOPMENT AUTHORITY, a public body corporate and politic of the State of Georgia (the "*DDA*"), and ATLANTIC STATION, L.L.C., a Delaware limited liability company (the "*Developer*"). All capitalized undefined terms used herein shall have the meanings assigned to such terms in Article I.

### WITNESSETH:

WHEREAS, the Developer is the owner of a one hundred thirty-eight (138) acre site located in the City of Atlanta, Georgia which is more particularly described on Exhibit A attached hereto and which is commonly referred to as the "*Atlantic Station Project*";

WHEREAS, in order to encourage the development of this economically and socially depressed area, the City Council by Resolution 99-R-1344, adopted on October 4, 1999 and signed by the Mayor on October 5, 1999, (i) adopted the Atlantic Steel Brownfield Redevelopment Plan pursuant to the authority granted to the City under the Act and (ii) created the Atlantic Steel TAD;

WHEREAS, the Authority and the City desire that the proceeds of the TAD Bonds be used to finance Redevelopment Costs associated with the redevelopment of the Property which include, without limitation, (i) clearing, grading and otherwise preparing the Property for redevelopment, (ii) environmental remediation of the Property, (iii) design, construction and installation of utilities such as water, sewer, storm drainage, electric, gas and telecommunications, (iv) design, construction and installation of streets, sidewalks, bikeways, curbs, gutters and other public works and (v) design and construction of parking facilities;

WHEREAS, the Board of Commissioners of Fulton County, by resolution adopted on November 29, 1999, and the Board of Education of the City of Atlanta, by resolution adopted on December 13, 1999, consented to the inclusion of their respective share of positive ad valorem tax increments derived from the Atlantic Steel TAD as further security for the TAD Bonds;

WHEREAS, the City Council by Resolution 99-R-1344 and the Board of Commissioners of Fulton County by the resolution adopted on November 29, 1999, consented to the inclusion of the portion of general fund revenues derived from the Atlantic Steel TAD that is attributable to local option sales taxes as further security for the TAD Bonds for a specified period as set forth herein;

WHEREAS, as further security for the TAD Bonds, the Developer will provide a Private Payment Guarantee, as more particularly described herein, to secure the payment of a portion of



the principal of and interest on the TAD Bonds in the event that the Tax Allocation Increments and the Local Option Sales Tax Revenues are insufficient to pay the TAD Bonds;

WHEREAS, as further security for the TAD Bonds, the City Council pursuant to the authority granted to the City of Atlanta under Ga. Const. Art. 9, Sec. 2, Para. 6, by Ordinance 01-0-0223 adopted on February 19, 2001, and approved by the Mayor on February 24, 2001, created the Special District which consists of the Property;

WHEREAS, as further security for the TAD Bonds, the City and the DDA intend to enter into the Intergovernmental Agreement in which the City, in accordance with the terms of this Agreement, will agree to levy a Special District Tax in the Special District in the event that the Tax Allocation Increments, the Local Option Sales Tax Revenues, the Private Payment Guarantee and certain security provided in the TAD Bond Documents are insufficient to pay for principal of and interest on the TAD Bonds;

WHEREAS, prior to the date of this Agreement, the Developer has commenced the redevelopment of the Property including, without limitation, environmental remediation, grading and site preparation and the installation of sewer and stormwater systems, and the City, the Authority, the DDA and the Developer desire that proceeds from the sale of the TAD Bonds be used to reimburse the Developer for Redevelopment Costs previously incurred and to pay for other Redevelopment Costs incurred after the date of this Agreement;

WHEREAS, the City has appointed the Authority as its redevelopment agent pursuant to the Act for the purpose of implementing certain redevelopment initiatives set forth in the Redevelopment Plan; and

WHEREAS, the Authority, the DDA, the City and the Developer desire to enter into this Agreement to set forth the respective duties, responsibilities and obligations of each party and the procedures for the disbursement of proceeds from the sale of TAD Bonds.

NOW, THEREFORE, in consideration of the Property and of other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto agree as follows:

## ARTICLE I

### **DEFINITIONS**{tc ""ARTICLEIDEFINITIONS"" \f 67 \l 0"1"}1

1.1 **Definitions**{tc ""1.1Definitions"" \f 67 \l 0"2"}1. For purposes of this Agreement, unless the context otherwise requires, each capitalized term used in this Agreement, and not otherwise defined in this Agreement, shall have the corresponding meaning specified for such term as set forth below.



For the purposes of this Agreement, each capitalized term used in this Agreement will have the meaning specified for such term as provided in this Section 1.1 or elsewhere in this Agreement.

“17th Street Bridge” means the bridge to be constructed over the I-75/I-85 Interchange at 17th Street which will include those items described in Section 4.3 of this Agreement and includes the southbound ramps and roads shown on the plans developed by the Georgia Department of Transportation.

“17th Street Project” means the Georgia Department of Transportation project for the construction and/or improvement of 17th Street from West Peachtree Street to Northside Drive, including the 17th Street Bridge.

“2002 Return” shall have the meaning defined in Section 7.4 of this Agreement.

“Act” means the Redevelopment Powers Law set forth at O.C.G.A. Section 36-44-1, et seq., as amended.

“Act of Bankruptcy” means the making of an assignment for the benefit of creditors, the filing of a petition in bankruptcy, the petitioning or application to any tribunal for any receiver or any trustee of the applicable Person or any substantial part of its property, the commencement of any proceeding relating to the applicable Person under any reorganization, arrangement, readjustments of debt, dissolution or liquidation law or statute of any jurisdiction, whether now or hereafter in effect, or if, within sixty (60) days after the filing of a bankruptcy petition or the commencement of any proceeding against the applicable Person seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, the proceeding shall not have been dismissed, or, if, within sixty (60) days after the appointment, without the consent or acquiescence of the applicable Person, of any trustee, receiver or liquidator of the applicable Person or of the land owned by the applicable Person, the appointment has not been vacated.

“Agreement” shall have the meaning defined in the introductory paragraph hereof.

“AIGGREIC” means AIG Global Real Estate Investment Corp.

“Applicable Law” means all applicable laws, statutes, resolutions, treaties, rules, codes, ordinances, regulations, certificates, orders, licenses and permits of any Governmental Body and judgments, decrees, injunctions, writs, orders or like action of any court, arbitrator or other administrative, judicial or quasi-judicial tribunal or agency of competent jurisdiction (including those pertaining to health, safety or the environment).

“Atlantic Steel TAD” means the tax allocation district created by the City Council by Resolution 99-R-1344, adopted on October 4, 1999, and approved by the Mayor on October 5, 1999, which district consists of the Property and certain areas immediately surrounding the Property.



"Authority" means the Atlanta Development Authority, a public body corporate and politic of the State of Georgia.

"Authorized Representative" means any Person authorized in a written instrument delivered to the Developer to act on behalf of the City, the Authority or the DDA, as the case may be, under the terms of this Agreement.

"Bond Year" means the annual period as specified in the TAD Bond Documents.

"Business Day" means any day other than a Saturday or Sunday or other day on which banks in City are authorized or required to be closed.

"Calamity Letter of Credit" shall have the meaning defined in Section 4.14(c) of this Agreement.

"Calamity Insurance Policy" shall have the meaning defined in Section 4.14(b) of this Agreement.

"CERCLA" means the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended, and any comparable or similar state or local laws.

"City" means the City of Atlanta, a municipal corporation of the State of Georgia.

"City Council" means the city council of City.

"City/Developer Bridge Agreement" shall have the meaning defined in Section 4.3 of this Agreement.

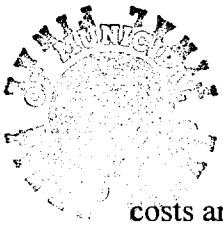
"Clean Air Act" means the Clean Air Act, 42 U.S.C. § 7401 et seq., as amended, and any comparable or similar state and local laws.

"Clean Water Act" means the Clean Water Act, 33 U.S.C. § 1251 et seq., as amended, and any comparable or similar state and local laws.

"Construction Completion Date" means the dates for completion of certain infrastructure improvement milestones as described in Schedule 1.1 attached hereto.

"Construction Contracts" means the Infrastructure Construction Contract and the Garage Construction Contract.

"Construction Lender" means each lender which is or will provide the construction financing for the Project, which lender has or will be granted a first-priority security interest in the Property.



“Construction Loan” means each construction loan obtained by the Developer to finance costs and expenses associated with the acquisition and development of the Property.

“Construction Loan Closing” means each applicable the consummation of a Construction Loan.

“Construction Loan Commitment” means one or more commitments from a Person to lend to the Developer sufficient funds to provide for construction of all or portions of the Project, subject to customary lender requirements and conditions.

“Construction Permits” means all excavation, sheeting and shoring, grading, land disturbance and building permits required to be obtained under Applicable Law with respect to the development and construction of the Project.

“Construction Schedule” means the construction schedule for the Project which is attached hereto as Schedule 5.3.

“County” means Fulton County, a political subdivision of the State of Georgia.

“DDA” means the Downtown Development Authority of the City of Atlanta, a public body corporate and politic of the State of Georgia.

“DDA Note” shall have the meaning defined in Section 7.3(b) of this Agreement.

“Developer” means Atlantic Station, L.L.C., a Delaware limited liability company.

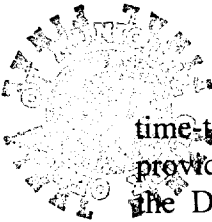
“Developer Representative” means any Person authorized in a written instrument delivered to the City to act on behalf of the Developer under the terms of this Agreement.

“Development Team” means the Development Team established for the Project in accordance with Section 4.17 of this Agreement.

“DOT” means the Georgia Department of Transportation, an agency of the State of Georgia.

“DOT/City Bridge Agreement” shall have the meaning defined in Section 4.3 of this Agreement.

“Due Diligence Materials” means (i) all feasibility studies, absorption studies, appraisals, engineering studies, soil tests, leasing plans and lease abstracts, all correspondence regarding the environmental condition of the Property (which are not subject to the Attorney/Client privilege, provided, however, that Developer provides the City with a written summary of such withheld documents and materials), environmental studies and such other similar studies conducted by or on behalf of or within the possession or reasonable control of the Developer that may exist from



time-to-time as to the Property and all other reports, tests or studies that the Developer may provide to the Construction Lender; (ii) all Financial Statements, reports and similar data as to the Developer as may be given from time-to-time to the Construction Lender; and (iii) the Construction Loan Commitment.

“Effective Date” means the date the City signs a counterpart of this Agreement that has been signed on behalf of the Developer and delivered on behalf of the Developer to the City.

“Engineer” means Law Engineering & Environmental Services, Inc. or such other professional engineers licensed to practice in Georgia, hired from time to time by the Developer to perform work pertaining to the Property.

“Environmental Laws” means RCRA, CERCLA, the Clean Water Act, the Clean Air Act, the Toxic Substances Control Act, and any other similar law including state and local laws relating to the environment and the health and safety requirements in such environmental laws, and the Remediation Plan.

“Environmental Report” means, collectively, those reports listed on Exhibit D attached hereto.

“EPA” means the Environmental Protection Agency.

“Event of Default” shall have the meaning defined in Section 10.2 of this Agreement.

“Feasibility Studies” means the feasibility studies described in Section 7.4 of this Agreement.

“Financial Statements” means consolidated balance sheets, statements of income, changes in stockholders’ equity and cash flows prepared in accordance with United States generally accepted accounting principals.

“Force Majeure” means the actual period of any delay caused by any strike or labor dispute not due to any act or omission of the party whose performance is required by the terms of this Agreement, unavailability of materials, unusual delays in transportation, riot or other civil disorder, national or local emergency, act of God or other cause or casualty beyond the City's, the Authority's or the Developer's reasonable control.

“Garage Construction Contract” means that certain Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is also THE CONTRACTOR; and where the Basis of Payment is the Cost of the Work Plus a Fee and there is no Guarantee of Cost, dated February 15, 2001, by and between the Developer and Vratsinas Construction Company, as the same may be amended from time to time.

“General Contractor” means C.W. Matthews Contracting Co., Inc., or such other experienced, bondable and reputable general contractor hired from time to time by Developer.



“Garage Plans” means those plans entitled “Atlantic Station Infrastructure for Atlantic Station, L.L.C.,” prepared by Carl Walker, Inc., as the same may be modified and amended from time to time.

“Governmental Body” means any governmental body, agency or authority with jurisdiction over the Property or the Developer.

“Hazardous Substances” means any hazardous waste, as defined by 42 U.S.C. § 6903(5), any hazardous substances as defined by 42 U.S.C. § 9601(14), any pollutant or contaminant as defined by 42 U.S.C. § 9601(33) and any toxic substances, oil or hazardous materials or other chemicals, pollutants or substances regulated by any Environmental Laws.

“Horizontal Infrastructure Improvements” means those horizontal infrastructure improvements to the Property as described in more detail in the Infrastructure Plans.

“Indemnified Person” shall have the meaning defined in Section 11.1 of this Agreement.

“Infrastructure Construction Contract” means that certain Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is also THE CONTRACTOR; and where the Basis of Payment is the Cost of the Work Plus a Fee and there is no Guarantee of Cost, dated October 6, 2000, by and between the Developer and the General Contractor, as the same may be amended from time to time.

“Infrastructure Plans” means those certain plans consisting of approximately 300 pages which are entitled Atlantic Station Development Infrastructure Plans (GP-11) dated April 26, 2001, as approved by the City Bureau of Buildings on May 21, 2001; as the same may be amended or modified from time to time in accordance with Applicable Law.

“Intergovernmental Agreement” means the agreement to be entered into between the City and the DDA pursuant to which the City will agree to levy a Special District Tax in the Special District in the event that the Tax Allocation Increments, the Local Option Sales Tax Revenues, the Private Payment Guarantee and certain other security provided in the TAD Bond Documents are insufficient to pay for principal of and interest on the TAD Bonds.

“Land Use Approvals” means all final unappealable federal, state and municipal land use approvals required to authorize the development and construction of the Project, including, without limitation, all required variances, special use permits, rezonings, resubdivisions, site plan approvals, and such other required municipal approvals, administrative or legislative approvals required for the Project. The term “Land Use Approvals” does not include the Construction Permits.

“Local Option Sales Tax Revenues” means the City and County shares of the local option sales tax revenues generated within the Atlantic Steel TAD.





"Master Declaration" shall have the meaning defined in Section 4.15 of this Agreement.

"Master Plan" means the conceptual site plan for the Property attached to this Agreement as Schedule 5.1, as the same may be amended or modified from time to time.

"Maximum Annual Debt Service" means the amount of principal and interest payable for a Bond Year which is the greatest amount of annual debt service payable for any one Bond Year as determined from a payment schedule for the estimated annual debt service for all Bond Years up to and including the last maturity date.

"Member" shall have the meaning defined in Section 9.4(a) of this Agreement.

"Mixed Use Development" shall have the meaning defined in Section 2.1 of this Agreement.

"No Further Remediation Letter" means the letter to be issued by the Georgia Environmental Protection Division, pursuant to the Remediation Plan, upon completion of the remediation of the Property in accordance with the Remediation Plan

"Parking Garage" means the garage to be constructed on that portion of the Property located north of 16th Street (as shown on the Master Plan), west of the I-75/I-85 Interchange, south of 20th Street (as shown on the Master Plan) and east of State Street (as shown on the Master Plan), which garage is anticipated to contain, upon full buildout, approximately 12,000 parking spaces and which spaces will service the retail, residential and office improvements to be constructed above the Parking Garage.

"Performance Bond" shall have the meaning defined in Section 4.14 of this Agreement.

"Person" means any individual, partnership, limited liability company, corporation, trust, unincorporated association or joint venture or other legally constituted entity.

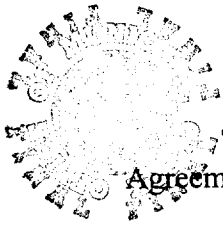
"Plans" means the Infrastructure Plans, the Garage Plans and the Remediation Plan.

"Private Payment Guarantee" means the private payment guarantee to be provided by the Developer as set forth in Section 7.2(a) of this Agreement.

"Project" means the environmental remediation of the Property in accordance with the Remediation Plan, the construction of the Horizontal Infrastructure Improvements in accordance with the Infrastructure Plans and the construction of the Parking Garage in accordance with the Garage Plans.

"Project Budget" means the budget setting forth in reasonable detail all costs to be incurred in connection with the Project.

"Project Funds" shall have the meaning defined in Section 2.3 of this Agreement.



"Project XL Agreement" shall have the meaning defined in Section 4.1 of this Agreement.

"Property" means the real property more particularly described on Exhibit A attached hereto.

"RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., as amended, and any comparable or similar state or local laws.

"Rebate Private Payment Guarantee" shall have the meaning defined in Section 4.9 of this Agreement.

"Redevelopment Costs" means costs incurred by the Developer, the payment of which are authorized by the Act, excluding, however, all costs associated with the acquisition of the Property (including, but not limited to, the repayment of the purchase money notes described in Section 4.18 of this Agreement), financing and general administration expenses.

"Redevelopment Plan" means the Atlantic Steel Brownfield Redevelopment Plan adopted by the Council by Resolution 99-R-1344, adopted on October 4, 1999, and approved by the Mayor on October 5, 1999, pursuant to the Act, which describes the redevelopment of the Property.

"Remediation Plan" means that certain Remediation Plan, Atlantic Steel Industries, Inc. Property, prepared for Atlantic Steel Industries, Inc. and Atlantis 16th, L.L.C., prepared by Law Engineering and Environmental Services, Inc., dated October 1999 and as may be amended in the future.

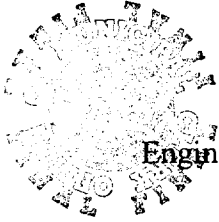
"School Board" means the Board of Education of the City of Atlanta, Georgia.

"Special District Tax" means the special tax to be assessed and levied by the City against property located in the Special District to support payment of the TAD Bonds as set forth in the Intergovernmental Agreement.

"Special District" means the special district created pursuant to the authority set forth in Ga. Const. Art. 9, Sec. 2, Para. 6 by the Council by Ordinance 01-0-0223 adopted on February 19, 2001, and approved by the Mayor on February 24, 2001, the boundaries of which are coterminous with the Property.

"State Implementation Plan" means that portion of the State Implementation Plan to Add a Transportation Control Measure for the Atlantic Steel Redevelopment Project.

"Support Agreement" means that certain Support Agreement to be executed by the City and the Authority.



“Survey” means that certain survey of the Atlantic Steel site prepared by Law Engineering, Inc. dated December 4, 1999, last revised May 2, 2001.

“TAD Bonds” means the tax allocation bonds issued by the City pursuant to the authority set forth in Section 36-44-14 of the Act.

“TAD Bond Payment Deficiency” is defined in Section 7.3(b) of this Agreement.

“TAD Bond Documents” means the indenture of trust pursuant to which the TAD Bonds are issued, the official statement with respect to the TAD Bonds, the Intergovernmental Agreement, the Tax Payment Agreement and the DDA Note and any other agreements entered into as part of the TAD Bond issuance.

“TAD Bond Feasibility Study” means the feasibility study referred to in clause (iii) of Section 7.4.

“TAD Closing” means the date of the closing of the issuance of the TAD Bonds as contemplated by Article VII of this Agreement.

“Tax Allocation Increments” means the positive ad valorem tax increments, as calculated pursuant to O.C.G.A. § 36-44-3(14), generated within the Atlantic Steel TAD which are levied by the City, the County, and the School Board.

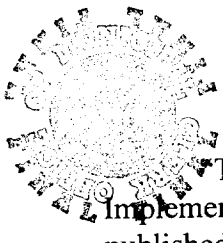
“Term” means the term of this Agreement, beginning on the Effective Date and ending on the date which is the earlier to occur of (i) twenty (20) years from the date of the issuance of the TAD Bonds or (ii) the date this Agreement is terminated pursuant to the terms hereof or by agreement of the parties hereto.

“Third Party Claims” means all claims, costs, expenses, liabilities or demands made by third parties and incurred by the City and/or the Authority or its successors in interest (including, without limitation, penalties, fines, clean up costs, court costs, reasonable attorneys’ fees and mitigation costs and liens) to the extent that such costs relate to or arise out of a release of Hazardous Substances existing on the Property.

“Title Policy” means the owner’s title insurance policy issued in favor of Developer by Chicago title Insurance Company with respect to the Property.

“Toxic Substance Control Act” means the Toxic Substance Control Act, 15 U.S.C. § 2601 et seq., as amended, and any comparable or similar state or local laws.

“Transaction Documents” means this Agreement, the Project XL Agreement, the City/Developer Bridge Agreement, the Remediation Plan, the State Implementation Plan and the Transportation Control Measure.



“Transportation Control Measure” means the Approval and Promulgation of Implementation Plans Georgia: Approval of Revisions for a Transportation Control Measure, published in the Federal Register in Vol. 65, No. 69 on April 10, 2000, and Vol. 65, No. 167 on August 28, 2000.

“Trustee” means the trustee under the indenture of trust pursuant to which the TAD Bonds are issued.

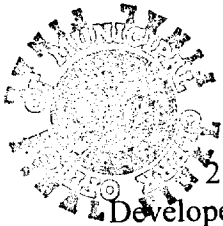
“Vertical Developers” means the private entities or persons, and their assigns, which, pursuant to contracts with the Developer, have the right to acquire parcels of land comprising the Property from the Developer for construction of components of the Mixed Use Development.

1.2. Construction {tc “1.2.Construction” \f 67 \l 0“2”}. The content of each exhibit, schedule, appendix or similar attachment hereto, or referenced in this Agreement as being attached hereto, is hereby incorporated into this Agreement as fully as if set forth within the body of this Agreement.

## ARTICLE II

### THE PROJECT {tc “ARTICLEIIITHEPROJECT” \f 67 \l 0“1”}

2.1. Construction of the Mixed Use Development {tc “2.1.ConstructionoftheMixedUseDevelopment” \f 67 \l 0“2”}. The Redevelopment Plan contemplates that the Atlantic Steel TAD will be developed, in part, as a Mixed Use Development, which will include, among other improvements, some or all of the following: (a) the Parking Garage, (b) office towers, (c) retail stores, (d) entertainment facilities, (e) restaurants, (f) residential apartments and lofts, (g) condominiums, (h) single-family townhomes, (i) hotels, (j) public streets and public plazas and (k) pedestrian walkways and bike paths (the “Mixed Use Development”). In furtherance thereof, the Developer has entered into contracts with Vertical Developers pursuant to which the Developer agrees to convey fee simple title to and/or lease certain tracts of land comprising the Property to Vertical Developers, and the Vertical Developers agree to construct certain components of the Mixed Use Development as described therein. A list of such contracts executed prior to the date of this Agreement, identifying the Vertical Developer, the parcels to be conveyed, and setting forth a brief description of the development that is the subject thereof, is attached hereto as Schedule 2.1. Prior to the date hereof, and subject to any confidentiality requirements, the Developer has provided copies of such contracts to the City, and the City acknowledges receipt of the contracts listed on Schedule 2.1. The Developer will use reasonable commercial efforts to continue to negotiate additional contracts with Vertical Developers for sale/lease of parcels of the Property and the construction thereon of a component of the Mixed Use Development. Upon execution of any additional contracts with Vertical Developers during the Term, and subject to any confidentiality requirements, the Developer, as necessary for the issuance of TAD Bonds, will provide copies thereof to the City.



2.2. **Development Plan; Project**tc ""2.2.DevelopmentPlan;Project"" \f 67 \l 0"2". Developer intends to prepare the Property for development by Vertical Developers by completing the Horizontal Infrastructure Improvements, the Parking Garage and the remediation of the Property in accordance with the Remediation Plan. Developer intends to sell or ground lease parcels of the Property to Vertical Developers for the construction of the Mixed Use Development on the Property. The City, the Authority and the DDA agree to assist Developer with the Project on the terms set forth in this Agreement to further the public purposes of the Redevelopment Plan and the Act.

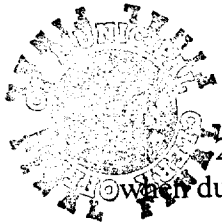
2.3. **Project Assistance**tc ""2.3.ProjectAssistance"" \f 67 \l 0"2". Upon satisfaction by Developer of the terms and conditions contained in this Agreement, the City and Authority agree to contribute up to [\$\_\_\_\_\_] from the proceeds of the TAD Bonds (the "*Project Funds*"), based upon results of the TAD Bond Feasibility Study, to Developer to assist in the payment or reimbursement of Redevelopment Costs, as such costs are more particularly identified in the Project Budget.

2.4. **Construction of Project**tc ""2.4.ConstructionofProject"" \f 67 \l 0"2". Developer agrees that Developer will construct the Project in all material respects with all reasonable dispatch, substantially in accordance with the Plans and the terms and conditions herein. Developer agrees subject to Force Majeure, to use commercially reasonable best faith efforts to cause the Project to be completed in accordance with the Construction Schedule; but in any event not later the Construction Completion Date specified on Schedule 1.1 as the date for the completion of the Project. If for any reason (other than Force Majeure) such construction is not completed within such period, there will be no diminution in or postponement of Developer's obligations to construct the Project in accordance with the terms of this Agreement.

2.5 **Developer to Obtain Approvals Required for the Project**tc ""2.5.DevelopertoObtainApprovalsRequiredfortheProject"" \f 67 \l 0"2". The Developer will obtain or cause to be obtained all necessary permits and approvals for the Project and will comply with all lawful requirements of any Governmental Body regarding the use or condition of the Project and to the extent such permits and approvals are not issued by the City, the Developer will provide a copy thereof to the City. Developer may, however, contest any such requirement by an appropriate proceeding diligently prosecuted. The City agrees to process permit applications in a prompt and timely manner in accordance with its normal rules and procedures.

2.6 **Disbursement of Project Funds**tc ""2.6.DisbursementofProjectFunds"" \f 67 \l 0"2". The Authority will make the Project Funds available to the Developer for the purpose of paying or reimbursing Redevelopment Costs in accordance with the requisition and disbursement procedures set forth in Article VIII.

2.7 **Use of Project Funds**tc ""2.7.UseofProjectFunds"" \f 67 \l 0"2". The Project Funds will be used by Developer solely to pay Redevelopment Costs incurred by Developer and to reimburse Developer for Redevelopment Costs incurred and paid by Developer for the Project and for no other purpose.



2.8 **Project Costs**{tc ""2.8ProjectCosts"" \f 67 \l 0"2"}. The Developer will pay which due all costs of development and construction of the Project in excess of the Project Funds.

2.9 **Unreasonable Delay or Abandonment**{tc ""2.9UnreasonableDelayorAbandonment"" \f 67 \l 0"2"}. If the Project is delayed for reasons other than Force Majeure and the City determines in its reasonable discretion that the Project will not be completed within 360 days after the Construction Completion Date specified on Schedule 1.1 as the date for the completion of the Project or if the City determines in its reasonable discretion that Developer has ceased work on and abandoned the Project for a period in excess of one year, then the City, on its behalf and on behalf of the Authority and the DDA, may terminate this Agreement by written notice to Developer or may seek any remedies available to the City hereunder. Upon termination of this Agreement as provided in this paragraph, the Authority, the DDA, the City and Developer will have no further rights, duties or obligations hereunder. Notwithstanding the foregoing, if the delay or abandonment is determined by City to be the result of the Developer's failure or refusal to undertake the Project with reasonable diligence the City may declare the Developer in default under this Agreement and seek any and all remedies available to it under this Agreement. The Authority and the DDA will enter into any and all documentation necessary to evidence and confirm any termination of this Agreement pursuant to this Section upon request from Developer or the City.

### ARTICLE III

#### **GENERAL COVENANTS OF DEVELOPER**{tc

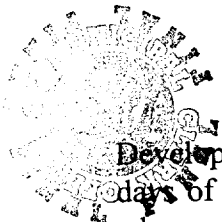
""ARTICLEIIIGENERALAFFIRMATIVECOVENANTSOFFDEVELOPER"" \f 67 \l 0"1"}

During the Term, Developer shall comply with the following general obligations:

3.1 **Completion of Improvements**{tc ""3.1CompletionofImprovements"" \f 67 \l 0"2"}. Developer will undertake the Project substantially in accordance with the Plans with diligence and continuity to completion in a good and workmanlike manner, free and clear of all liens and claims for material supplied or for labor or services performed in connection with the Project.

3.2 **Compliance with Construction Loan Documents**{tc ""3.2CompliancewithConstructionLoanDocuments"" \f 67 \l 0"2"}. Developer agrees to comply with each and every material obligation and covenant of the Developer in the documents evidencing the Construction Loan and other Transaction Documents to which it is a party.

3.3 **Litigation**{tc ""3.3Litigation"" \f 67 \l 0"2"}. Developer will notify the Authority in writing, within five (5) days of receipt of actual notice thereof, of any actual, pending or threatened claim, demand, litigation or adversarial proceeding in which Developer is a party, in which Developer has reason to believe it might become a party or which may materially or adversely affect the Project or the Mixed Use Development, in which a claim is made against Developer or against the Property and the Project, and of any judgment rendered against the



Developer in excess of \$100,000. Developer will notify Authority in writing and within five (5) days of any matter that Developer reasonably considers may result or does result in a material adverse change in the financial condition or operation of Developer or the Project.

3.4 **Financial Information**{tc ""3.4FinancialInformation"" \f 67 \l 0"2"} Developer will make the Financial Statements with respect to itself and the Project available for review by the City or its designee at such reasonable times as the City may request.

3.5 **Condition of Title**{tc ""3.5ConditionofTitle"" \f 67 \l 0"2"} Developer will obtain and provide to the City the Title Policy and the Survey which shall be reasonably satisfactory to the City.

3.6 **Maintenance of Property by Developer**{tc ""3.6MaintenanceofPropertybyDeveloper"" \f 67 \l 0"2"} Developer agrees that it will at its own expense, keep the Property or cause the Property to be kept in as reasonably safe condition as its activities thereon shall permit.

3.7 **Records and Accounts**{tc ""3.7RecordsandAccounts"" \f 67 \l 0"2"} The Developer will keep true and accurate records and books of account with respect to itself and the Project in which full, true and correct entries will be made on a consistent basis, in accordance with generally accepted accounting principles.

3.8 **Liens and Other Charges**{tc ""3.8LiensandOtherCharges"" \f 67 \l 0"2"} Developer will duly pay and discharge, or cause to be paid and discharged, before the same shall become overdue all claims for labor, materials, or supplies that if unpaid might by law become a lien or charge upon the Property unless Developer is lawfully protesting the same.

3.9 **Compliance with Laws, Contracts, Licenses, and Permits**{tc ""3.9CompliancewithLaws,Contracts,Licenses,andPermits"" \f 67 \l 0"2"} Developer will comply with (a) all Applicable Laws affecting the Project, (b) all agreements and instruments by which it or the Property may be bound, and all restrictions, covenants and easements affecting the Property, (c) all applicable decrees, orders and judgments and (d) all licenses and permits required by Applicable Law and regulations for the conduct of its business or the ownership or use of the Property.

3.10 **Publicity and Signage**{tc ""3.10PublicityandSignage"" \f 67 \l 0"2"} Developer, the Authority, the DDA and the City will coordinate efforts to the extent practical with respect to any publicity in connection with the Project, including participation in such events as ground breaking and opening ceremonies. The City, the DDA and the Authority, at their sole expense, may install signage, similar to the signage of the General Contractor and the Construction Lender, at the Property with respect to the City's, the DDA's and the Authority's participation in the Project.

3.11 **Event Notices**{tc ""3.11EventNotices"" \f 67 \l 0"2"} Developer will promptly notify the Authority in writing of (a) the occurrence of any default (as described in Section 10.1



of this Agreement) or Event of Default; (b) the occurrence of any levy or attachment against its assets or other event which may have a material adverse effect on the ability of Developer to complete the Project; (c) the receipt by Developer of any written notice of default or notice of termination with respect to any material contract or agreement relating to the ownership, construction, operation, or use of the Project which may materially and adversely affect the ability of Developer to complete the Project; (d) any proposed change in (i) ownership or control of the Developer, other than any change permitted under this Agreement, (ii) the loan agreement between Developer and AIGGREIC, or (iii) the loan documents evidencing the Construction Loan; or (e) any material change or modification in terms of any Transaction Document or any agreement with a Vertical Developer.

3.12 **Taxes** {tc ""3.12Taxes"" \f 67 \l 0"2"}. Developer will pay when due all taxes imposed upon or assessed against any portion of the Property then owned by Developer, or upon the revenues, rents, income and profits derived by Developer from the Property, and Developer will provide to City, within ten (10) days after receipt of a written request by City, validated receipts showing the payment of such taxes when due.

3.13 **Insurance** {tc ""3.13Insurance"" \f 67 \l 0"2"}. Developer will keep the Property and the improvements constructed thereon which are owned or used by the Developer or its affiliates continuously insured, with coverage and terms acceptable to the City and the Authority, against such risks as are customarily insured against by businesses of like size and type engaged in the same or similar operations including, without limiting the generality of the foregoing:

(a) casualty insurance on the Property in an amount not less than the full insurable value of all improvements located on the Property, against loss or damage by fire and lightning and other hazards ordinarily included under uniform broad form extended coverage policies, limited only as may be provided in the uniform broad form of extended coverage endorsement at the time in use in the State of Georgia; provided that, such insurance is only required to the extent it is customary in the industry for such Property;

(b) general comprehensive liability insurance against claims for bodily injury, death or property damage occurring on, in or about the Project (such coverage to include provisions waiving subrogation against the Authority and the City) in amounts not less than 1,000,000 with respect to bodily injury to any one person, 2,000,000 with respect to bodily injury to two or more persons in any one accident and 100,000 with respect to property damage resulting from any one occurrence;

(c) During the construction of the Project and any components of the Mixed Use Development by the Developer or any of its affiliates, the Developer will cause all contractors and subcontractors to maintain liability insurance with respect to the Project and the Mixed Use Development under the workers' compensation laws of Georgia; provided, however, that the insurance so required may be provided by blanket policies now or hereafter maintained by the Developer; and

(d) During the construction of the Project and any components of the Mixed Use Development by the Developer or any of its affiliates, the Developer will cause all





contractors and subcontractors to maintain and carry builder's risk coverage on the value of the improvements as constructed on the Property.

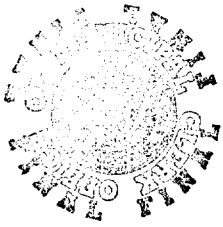
In addition, Developer will name the City, the DDA and the Authority as additional insured parties under all such policies maintained by Developer and will cause its affiliates, contractors and subcontractors to name the City, the DDA and Authority as additional insured parties under all such policies maintained by the Developer's affiliates, contractors and subcontractors. Further, Developer agrees to use commercially reasonable best faith efforts to cause Beazer Homes, Inc. and Realty Development Corporation which have previously entered into vertical development contracts with Developer to name the City, the DDA and the Authority as additional insured parties under all policies of insurance required to be maintained by such parties pursuant to the Master Declaration. Developer also agrees that Developer will amend the Master Declaration prior to entering into any agreements with Vertical Developers other than those agreements previously entered into with Beazer Homes, Inc. and Realty Development Corporation (i) to impose an obligation on all parties which are bound by the Master Declaration to name the City, the DDA and the Authority as additional insured parties under all policies of insurance required to be maintained pursuant to the Master Declaration and (ii) to require that such provisions in the Master Declaration regarding naming the City, the DDA and the Authority may not be amended to impose less stringent requirements upon such Vertical Developers so long as the TAD Bonds remain outstanding. All such policies in which the City, the DDA and the Authority as additional insured parties shall provide that the City, the DDA and the Authority shall receive written notice at least thirty (30) days prior to any termination or expiration of such policies.

3.14 **Access to Records**{tc ""3.14AccessToRecords"" \f 67 \l 0"2"}. The City and the Authority will be permitted with reasonable prior notice to examine the books and records of the Developer with respect to the Project. Such books and records shall be preserved for a period of three (3) years, or for such longer period as may be required by law.

3.15 **Further Assurances and Corrective Instruments**{tc ""3.15FurtherAssurancesandCorrectiveInstruments"" \f 67 \l 0"2"}. The City, the Authority, the DDA and Developer agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements and amendments hereto and such further instruments as may reasonably be required for carrying out the intention or facilitating the performance of this Agreement provided that the rights of the Developer hereunder and the ability of Developer to construct the Project are not impaired thereby.

3.16 **Performance by Developer**{tc ""3.16PerformancebyDeveloper"" \f 67 \l 0"2"}. Developer will perform all acts to be performed by it hereunder and will refrain from taking or omitting to take any action that would materially violate Developer's representations and warranties hereunder or render the same materially inaccurate as of the date hereof and subsequent requisition dates or that in any material way would prevent the consummation of the transactions contemplated hereby in accordance with the terms and conditions hereof.

3.17 **Restrictions on Transfers**{tc ""3.17RestrictionsonTransfers"" \f 67 \l 0"2"}



(a) While the TAD Bonds are outstanding, Developer shall not sell, transfer or otherwise convey the Property or any interest therein without the prior approval of the City which shall not be unreasonably withheld. This provision shall not apply to the sale or lease of portions of the Property to Vertical Developers.

(b) While the TAD Bonds are outstanding, Developer will not without the prior consent of the City which shall not be unreasonably withheld (i) merge or consolidate with any other entity or sell, lease, transfer, distribute, liquidate or otherwise wind up its affairs or dispose of all or a substantial portion (twenty-five percent (25%) or more) of its assets or sell or otherwise transfer more than twenty-five (25%) of its stock, partnership interest or other equity interest or permit any dilution of its stock, partnership interest or other equity interest below seventy-five percent (75%) of such total interest or (ii) amend its organizational documents to the extent such documents impose certain "single purpose" restrictions on Developer's activities.

(c) Notwithstanding the restrictions imposed in paragraphs (a) and (b) of this Section, with prior notice to the City and the Authority, Jacoby Atlantic Redevelopment LLC, the sole member of Developer, and AIGGREIC may engage in such transfers and transactions among themselves without prior approval.

#### ARTICLE IV


##### SPECIAL COVENANTS OF DEVELOPER{tc

"ARTICLE IV SPECIAL COVENANTS OF DEVELOPER" \f 547 \l 001}

4.1 Project XL{tc "4.1ProjectXL" \f 547 \l 002}. Developer will comply with any mandatory requirements of and use commercially reasonable best faith efforts to implement the recommendations and objectives outlined in the Atlanta Steel Redevelopment Project XL Final Project Agreement dated April 15, 1999, by and between the United States Environmental Protection Agency and Atlantis 16<sup>th</sup>, L.L.C. (the "*Project XL Agreement*").

4.2 Environmental Remediation{tc "4.2EnvironmentalRemediation" \f 547 \l 002}. The Developer shall be responsible for compliance with all Environmental Laws as they apply to the Property and for compliance with the Remediation Plan, the TCM and the State Implementation Plan. Developer shall obtain a pollution legal liability insurance policy with respect to the Property in the amount of Seventy-Five Million Dollars (\$75,000,000). Developer shall cause the City, the DDA and the Authority to be named additional insured parties under such policy, and such policy shall provide that the City, the DDA and the Authority shall receive written notice at least thirty (30) days prior to any termination or expiration of such policy.

4.3 Construction of 17<sup>th</sup> Street Project{tc "4.3Constructionof17<sup>th</sup>StreetBridge" \f 547 \l 002}. The Developer shall comply with all obligations described in the Agreement with Regard to 17<sup>th</sup> Street Extension from West Peachtree Street to Northside Drive dated April 25, 2001, by and between the Developer and the City (the "*City/Developer Bridge Agreement*") which obligates the Developer to perform all of the City's obligations under the Agreement for



the 17<sup>th</sup> Street Extension from Northside Drive to West Peachtree Street including New Interchange Ramps and Bridge over I-75/I-85 by and between the State of Georgia and the City (the "DOT/City Bridge Agreement"). Specifically, the Developer has agreed under the City/Developer Bridge Agreement to fund the costs for pre-construction engineering (design) activities with respect to the 17<sup>th</sup> Street Project. The plans and specifications for the 17<sup>th</sup> Street Bridge shall include, at a minimum, the following: (a) two (2) eleven (11) feet general-use lanes in each direction for vehicular traffic, (b) two (2) sixteen (16) feet dedicated, bicycle and transit lanes separated from general use lanes using a double row of raised pavement markings, (c) twenty-four (24) facilities organized as a linear park and (d) transit lanes which will accommodate a light rail line linking the Arts Center MARTA station with the Property. Developer will use its commercially reasonable best faith efforts to complete its obligations under the City/Developer Bridge Agreement as promptly as reasonable possible so that the Georgia Department of Transportation may solicit bids for the construction of the 17<sup>th</sup> Street Bridge as promptly as reasonable possible.

4.4 **Permits and Approvals**. The Developer will obtain all Construction Permits and Land Use Approvals necessary for undertaking and completing the Project, and to the extent such permits and approvals are not issued by the City, the Developer will provide a copy thereof to the City.


4.5 **Affordable Housing**{tc ""4.5AffordableHousing"" \f 547 \l 002}. The Developer agrees to use its best efforts to comply with and implement the Atlantic Station Affordable Living Plan attached hereto as Schedule 4.5.

4.6 **Traffic Mitigation**{tc ""4.6TrafficMitigation"" \f 547 \l 002}. The Developer agrees to use its best efforts to comply with and implement the requirements of the State Implementation Plan and the Transportation Control Measure.

4.7 **Water, Energy, Waste and Pollution Controls**{tc ""4.7Water,Energy,WasteandPollutionControls"" \f 547 \l 002}. The Developer agrees to use its commercially reasonable best efforts to comply with and implement the objectives and recommendations for water, energy, waste and pollution controls outlined in the Redevelopment Plan and the Project XL Agreement.

4.8 **Revenue Sharing**{tc ""4.8RevenueSharing"" \f 547 \l 002}. [Describe revenue sharing between Developer and City.]

4.9 **MBE and Small Business Hiring Goals**{tc ""4.9MBEandSmallBusinessHiringGoals"" \f 547 \l 002}. The Developer will use its best efforts to comply with and implement the Atlantic Station MBE/FBE Program attached hereto as Schedule 4.8 with respect to the participation of competitive certified minority business enterprises/female business enterprises in all business opportunities which relate to the development and construction of the Project.



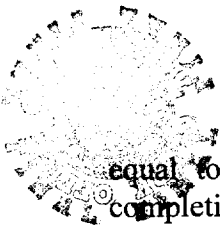
4.10 **Purchase Price Rebate**{tc "4.10 Purchase Money Rebate" \f 547 \l 002}. The Developer acknowledges that the possibility of the levy of the Special District Tax in the Special District may adversely impact the property owners in the Special District. Accordingly, the Developer hereby agrees to enter appropriate agreements and instruments in form and substance acceptable to the City to provide all third-party Vertical Developers with a purchase price rebate in the event that such Special Tax is levied by the City in the Special Tax District, which agreement shall be recorded in the land records of Fulton County. The Developer shall provide as security for Developer's obligation to provide purchase money rebates to such Vertical Developers, a letter of credit issued by an entity with a credit rating, as determined by Standard & Poors, of A or better, in an amount agreeable to such Vertical Developers (the "*Rebate Private Payment Guarantee*") or such other security as such parties hereto find mutually acceptable. Developer shall require each Vertical Developer which transfers all or any portion of the Property to subsequent purchasers to assign its rights with respect to the Rebate Private Payment Guarantee, in whole or in part, to any successor in title. In addition, Developer shall cause any affiliate to which Developer transfers all or any portion of the Property (a) to enter appropriate agreements and instruments in form and substance acceptable to the City to provide all purchasers of such portions of the Property from such affiliate of the Developer with a purchase price rebate secured by a similar letter of credit in the event that such Special Tax is levied by the City in the Special Tax District, which agreement shall be recorded in the land records of Fulton County and (b) to require such purchasers which transfer such property to subsequent purchasers to assign its rights with respect to the purchase price rebate, in whole or party, to any successor in title.

4.11 **Repayment of Water/Sewer Loan**{tc "4.11 Repayment of Water/Sewer Loan" \f 547 \l 002}. Developer hereby agrees that the City will cause \$10,000,000 from the TAD Bond proceeds to be deposited into an appropriate City account pursuant to the Water/Sewer Reimbursement Agreement for the Atlantic Steel Brownfield Redevelopment Area dated as of February 15, 2001, by and between the City and the Developer.

4.12 **AIGGREIC Participation**{tc "4.12 Conversion of AIG Debt to Equity" \f 547 \l 002}. [Prior to the TAD Closing, the Developer hereby agrees to furnish the City with documentation which in the reasonable discretion of the City demonstrates that the payment of any loans or advancements made by AIGGREIC to the Developer are subordinated in payment to [ ]].]

4.13 **Private Payment Guarantee**. The Developer shall pay for and maintain, or cause to be paid for and maintained, the Private Payment Guarantee as set forth and required in Section 7.3 of this Agreement.

4.14 **Payment and Performance Bond**{tc "4.14 Payment and Performance Bond" \f 547 \l 002}. The Developer shall purchase and cause to be maintained a Payment and Performance Bond issued by an underwriter reasonably acceptable to the City securing the Developer's obligations to complete the Horizontal Infrastructure Improvements, the Parking Garage and the work under the Remediation Plan (other than execution and recordation of the conservation easement) for the Project (the "*Performance Bond*"). The Performance Bond shall be in form and substance reasonably acceptable to the City and the Authority and in an amount



equal to the actual cost (which cost shall not be solely based on the Project Budget) of completion of the Horizontal Infrastructure Improvements, the Parking Garage and the work under the Remediation Plan (other than execution and recordation of the conservation easement) not completed as of the TAD Closing Date plus twenty percent (20%). Developer shall provide the City and the Authority with written evidence from the General Contractor of the costs of the completion of the Horizontal Infrastructure Improvements, the Parking Garage and the work under the Remediation Plan (other than execution and recordation of the conservation easement). The Performance Bond shall name the Trustee as an obligee; provided that the City acknowledges that other parties also may be named, from time to time, as obligees under the Performance Bond, and shall be pledged as additional security for the TAD Bonds at the TAD Closing.

4.15 **Calamity Events**{tc "4.15 Calamity Insurance" \f 547 \l 002}.

(a) The Developer shall either purchase and maintain and cause to remain in full force effect (i) the Calamity Insurance Policy (as defined below) or (ii) the Calamity Letter of Credit (as defined below), or any combination of the foregoing which when combined together provide the same level of protection and security.

(b) In the event that the Developer elects to purchase and maintain Calamity Insurance, the Developer shall cause to remain in full force effect a special calamity insurance policy issued in the name of the Trustee the proceeds of which will be available in the event of a payment default under the TAD Bonds which will remain in effect until the later to occur of: (i) the date of the receipt by the Developer of the No Further Remediation Letter from the Environmental Protection Agency and (ii) the effective date of the contract entered into by the Georgia Department of Transportation and a commercial construction company for the construction of the 17<sup>th</sup> Street Bridge (the "*Calamity Insurance Policy*"). The Calamity Insurance Policy shall be issued by an insurance company that is acceptable to the City, and insurance company issuing such policy shall have a credit rating, as determined by Standard & Poors, of A or better. The Calamity Insurance Policy shall further provide that the insurance company issuing such policy shall provide the Trustee with at least ninety (90) days prior written notice of any expiration or termination of such policy. The Calamity Policy shall have a coverage limit of no less than the maximum amount of principal amount and accrued interest (including any additional amounts of interest payable upon such repayment of the TAD Bonds) of the TAD Bonds. The Developer shall pay in advance from the TAD Bond proceeds all premiums associated with such policy on or before the TAD Bond Closing Date.

(c) In the event that the Developer elects to purchase and maintain the Calamity Letter of Credit, the Developer cause to remain in effect a letter of credit by an entity with a credit rating, as determined by Standard & Poors, of A or better, in an amount sufficient to pay in full the principal and accrued interest (including any additional amounts of interest payable upon such repayment of the TAD Bonds) which the Trustee may draw against upon the occurrence of a payment default under the TAD Bond Documents which will remain in effect until the later to occur of: (i) the date of the receipt by the Developer of the No Further Remediation Letter from the Environmental Protection Agency and (ii) the effective date of the contract entered into by the



Georgia Department of Transportation and a commercial construction company for the construction of the 17<sup>th</sup> Street Bridge (the "*Calamity Letter of Credit*").

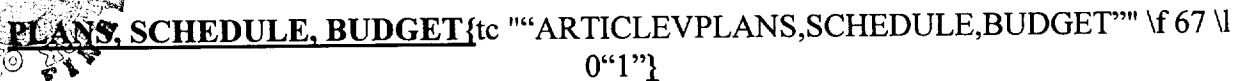
4.16 **Protective Covenants**{tc "4.16 [Restrictive Covenants]" \f 547 \l 002}. The Property is or shall be encumbered by a Master Declaration of Protective Covenants, Conditions and Restrictions and Easements for the Atlantic Redevelopment Site (the "*Master Declaration*") substantially in the form attached hereto as Exhibit B, which, among other things, shall establish an owner's association, common areas, assessments, use restrictions and a design review committee to insure the development of the Mixed Use Development in accordance with the Master Plan. Each parcel of Property sold or leased by the Developer shall be subject to the Master Declaration.

4.17 **Neighborhood Employment**{tc "4.17 Neighborhood Employment" \f 547 \l 002}. The Developer hereby agrees to use commercially reasonable best faith efforts to encourage Vertical Developers and their tenants to give preference to applicants who are residents of the neighborhoods located in the vicinity of the Property for purposes of employment at the Atlantic Station Project.

4.18 **Development Team**{tc "4.18 Development Team" \f 67 \l 02}. The Developer agrees to establish and maintain a development team to provide advice and consultation to Developer in connection with the development and construction of the Project (the "Development Team"). The Development Team shall consist of [the Mayor of the City, the Director of the City's Planning Commission, the President of the Authority] or any person designated by such members to act on their behalf and one or more representatives of each of the Developer and AIG as the Developer determines in its discretion. The Development Team shall meet at least monthly unless the public officials elect to meet less frequently. At the Development Team meetings, Developer shall provide reports on the status of the development and construction of the Project, including any material changes or contemplated changes to the Master Plan and the Plans. Developer shall also provide financial information on actual expenditures versus budgeted expenditures and provide reports with respect to Developer's progress under the other Transaction Documents and any actual or expected agreements with Vertical Developers. Developer shall provide such other information as the Development Team members may reasonably request with respect to the Project.

4.19 **Purchase Money Notes**{tc "4.19 Purchase Money Notes" \f 67 \l 02}. Developer shall pay in full (a) the Promissory Note dated December 20, 1999, delivered by Developer and Atlantic South Land, L.L.C., its subsidiary, to Atlantic Steel Industries, Inc. in the original principal amount of \$21,900,000 and (b) the Promissory Note dated December 20, 1999, delivered by Developer and Atlantic South Land, L.L.C., its subsidiary, in the adjustable principal amount of \$32,347,520 on the appropriate maturity dates for such notes. The Developer has provided to the City copies of the foregoing notes together with any amendments and modifications thereto.

## ARTICLE V



5.1 **Master Plan** {tc ""5.1MasterPlan"" \f 67 \l 0"2"}. Attached hereto as Schedule 5.1 is the current Master Plan. The City, the DDA and the Authority acknowledge that, during the Term, modifications to the Master Plan will occur, and to the extent approvals are required for such modifications pursuant to Section 5.5 of this Agreement, the parties will follow the procedures set forth in such Section. The Developer will provide to the City, the DDA and the Authority a copy of any material modifications to the Master Plan which affect the Project, and will upon request of such parties provide a copy of any other modifications thereto.

5.3 **Project Schedule**}. Attached hereto as **Schedule 5.3** is the current Construction Schedule for the Project. The Developer will provide to the City, the DDA and the Authority a copy of any material modifications (60 days or more) to the Construction Schedule for the Project accompanied by an explanation of the cause of the delay, and will upon the request of such parties provide a copy of any other modifications thereto.

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applicable ordinances and procedures of the City for such modifications, and any material modifications thereto shall also be subject to review and approval under Section 5.5 of this Agreement.

**5.5 Modifications of Master Plan or Plans by Developer**{tc  
""5.5ModificationsofMasterPlanorPlansbyDeveloper"" \f 67 \l 0"2"}. If Developer wishes to make material modifications (as defined in this Section 5.5) to the Master Plan or the Plans, Developer shall submit the proposed modifications to the Authority for review and approval. Any such submission shall clearly identify all changes, omissions and additions as compared to the previously approved Master Plan and Plans. If the Authority determines, in its reasonable judgment, that the proposed modifications are acceptable, the Authority shall so notify Developer, and the Master Plan or the Plans, as the case may be, shall be deemed to incorporate the modifications that have been approved by the Authority and Developer shall perform its obligations under this Agreement in accordance with such modification. If the Authority determines, in its reasonable judgment, that the proposed modifications are not acceptable, the Authority shall so notify Developer, specifying in reasonable detail in what respects they are not acceptable, and Developer shall either (a) withdraw the proposed modifications, in which case, construction shall proceed on the basis of the Master Plan and the Plans previously approved by the Authority, or (b) revise the proposed modifications in response to the Authority's objections, and resubmit such modifications to the Authority for review and approval within thirty (30) days after such notification from the Authority. Each review by the Authority under this Section 5.5 shall be carried out within thirty (30) days following the date of submission by Developer of the proposed modifications. Notwithstanding anything herein contained to the contrary, the approval of the Authority to any modifications by Developer shall not be unreasonably withheld. [As used herein, "material modification" means with respect to the Master Plan any change requiring the approval of the City's Zoning Review Board; with respect to any roadway change, any change requiring the approval of DOT; with respect to the Infrastructure Plans and Garage Plans means any change requiring the approval of the City Bureau of Buildings; and with respect to the Remediation Plan means any change requiring the approval of the EPA or the Georgia Environmental Protection Division.]

**5.6 Modifications to Project Budget**{tc  
""5.6ModificationstoProjectBudget"" \f 67 \l 0"2"}. Changes to the Project Budget of more than ten percent (10%) shall constitute material changes and shall be subject to review and approval by the Authority under substantially the same procedures for review and approval of modifications to the Master Plan and Plans set forth in Section 5.5.

**5.7 Approvals, Consents, Notices to the City, Authority and DDA**{tc  
""5.7Approvals,Consents,NoticestotheCity,AuthorityandDDA"" \f 67 \l 0"2"}. In each instance where this Agreement requires the approval or consent of, or delivery of notice to, the City, the Authority or the DDA, such approval or consent shall be signed by the Mayor of the City, the President of the Authority or the President of the DDA, or their designees as appropriate. Such officers may designate in a written instrument delivered to the Developer an Authorized Representative to act on their behalf. The foregoing applies to specific approvals required under





this Agreement and does not eliminate or modify the Developer's obligation to adhere to the City's normal administrative process for licenses, permits, land use and other approvals.

## ARTICLE VI

### CONSTRUCTION PROCEDURES{tc "ARTICLEVI CONSTRUCTION PROCEDURES" \f 67 \l 0"1"}

With respect to the Project, the Developer, the City, the DDA and the Authority will follow the following construction process:

6.1 Dedication of Project Land{tc "6.1 Dedication of Project Land" \f 67 \l 0"2"}. To the extent that any portion of the Property is intended to be utilized for public streets, other public infrastructure, or other public purposes, the Developer will cause such portions of the Property to be promptly dedicated to City (or deeded to City pursuant to City's street acquisition plat process) for such public purposes, at such time as is provided under Applicable Law and the procedures of the City. All such portions of the Property shall be dedicated to the City free and clear of all liens and encumbrances (other than reasonable and customary exceptions which are approved in writing by the City; provided that the City will not withhold its consent unreasonably).

6.2 Construction Commencement and Completion{tc "6.2 Construction Commencement and Completion" \f 67 \l 0"2"}. The Developer has commenced the Project. The Developer will pursue with all due diligence the construction and undertaking of the Project in accordance with the Plans and in a good and workmanlike manner, in accordance with the rules, regulations and requirements of all Governmental Bodies having jurisdiction and with the requirements of the local fire insurance rating organization, and will fully complete the Project by the Construction Completion Date, subject to Force Majeure.

6.3 Developer's Obligations With Respect to Construction Matters{tc "6.3 Developer's Obligations With Respect to Construction Matters" \f 67 \l 0"2"}. In addition to the requirements set forth above, Developer covenants, as follows with respect to the construction of the Project:

(a) Construction Contracts. The Developer will deliver to the City a copy of the Infrastructure Contract and the Garage Construction Contract.

(b) Construction Loan Commitment. The Developer will obtain and deliver to Authority an executed copy of the Construction Loan Commitment for a Construction Loan of not less than \$80,000,000 at least ten (10) days prior to the TAD Closing Date.

(c) Construction Loan Closing. The Developer will cause the Construction Loan to close in accordance with the Construction Loan Commitment on or before thirty (30) days after the TAD Closing, and the Developer will promptly notify the Authority that the Developer and the



Construction Lender have closed on the Construction Loan for the Project. Until such time as the Construction Loan has closed, the City and the Authority shall have no obligation to advance Project Funds.

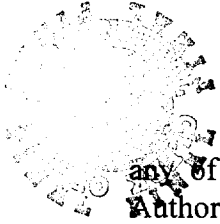
(d) Developer Deliveries.

(i) Upon completion of the Project, the Developer will deliver to the Authority a certificate from the Engineer that the Horizontal Infrastructure Improvements, the Parking Garage and the Remediation Plan has been completed substantially in accordance with the Plans; and

(ii) Upon receipt of the No Further Remediation Letter, the Developer will promptly deliver a copy of such letter to the Authority.

6.4 Cooperation of Authorityfc ""6.4CooperationofAuthority"" \f 67 \l 0"2". Within thirty (30) days after receipt of a request from the Developer, the Authority, the DDA and the City agree to execute or join in any and all utility and sanitary and storm sewer easement agreements, emergency vehicle rights of way, applications for the Land Use Approvals and any other permits, licenses, or other authorizations in which the Authority, the DDA or the City is required under Applicable Law to join by any Governmental Body in connection with the Developer's right to construct and undertake the Project and which (a) are consistent with this Agreement and the Plans; (b) do not expose the Authority, the DDA or the City to any risk of liability of any kind that is not insured against to the Authority's, the DDA's or the City's satisfaction. The form of all such documents must be acceptable to the Authority, the DDA and the City, to the extent such party is a party to the document.

6.5 Access to the Project and Inspectionfc ""6.5AccesstotheProjectandInspection"" \f 67 \l 0"2". (i) The Authority and its Authorized Representatives shall have the right, at all reasonable times upon the furnishing of at least twenty-four (24) hours prior notice to Developer, to enter the Property and to examine and inspect the Project. In emergency circumstances or in circumstances requiring immediate access to the Property, the City and the Authority shall not be bound by the twenty-four (24) hour prior notice requirement. Entry upon the property for purposes of inspection shall be in the company of a representative of Developer and the City and the Authority shall not be entitled to perform any test or make any inspection in violation of the Remediation Plan except as may otherwise be required under Environmental Laws. Developer shall provide reasonable facilities for such access for a detailed review and inspection of the Project and work being performed. The Authority and its Authorized Representatives shall also have such right of access to the Property as may be reasonably necessary to cause the completion of construction of portions of the Project financed with TAD Bond proceeds, and thereafter for its proper maintenance, in the event of failure by Developer to perform its obligations under this Agreement. Such access also is subject to the same notice and other requirements set forth above. Developer hereby covenants to execute, acknowledge and deliver all such further documents, and do all such other acts and things as may be necessary to grant to the Authorized Representative any such right of entry.



(ii) If the Plans, Applicable Laws, or any Governmental Body require any of the work on the Project to be specifically tested or inspected, Developer shall give Authority timely notice of its readiness for inspection and testing, and of the date set for such test or inspection, and, regardless of whether the Plans call for any particular testing or inspection. The Authority, at its sole cost and expense, shall have the right to make such reasonable inspections and tests at such reasonable times as the Authority may request, provided in no event shall the Authority have the right to perform any environmental testing or testing which is invasive of the soil at the Property unless otherwise required by Environmental Laws. The Authority shall give Developer at least twenty-four (24) hours notice of its intent to test and shall coordinate any entry onto the Property so as to not disturb ongoing activities at the Property.

## ARTICLE VII

### FINANCING

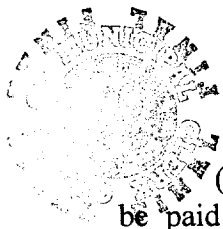
{tc ""ARTICLEVIIFINANCING"" \f 67 \l 0"1"}

7.1. **Issuance of Tax Allocation Bonds**{tc ""7.1IssuanceofTaxAllocationBonds"" \f 67 \l 0"2"}

(a) To provide financing for the Project, the City agrees that, to the extent permitted by law and upon satisfaction of the conditions set forth in Section 7.5 hereof, the City, in good faith, will issue the TAD Bonds on a tax-exempt basis, in one or more series, with maturities not beyond December 31, 2025. The aggregate principal amount of the TAD Bonds will be an amount agreed upon by the underwriters of the TAD Bonds, the City, and the Developer based upon the Tax Allocation Increments projected to be available to pay debt service on such TAD Bonds, together with a reasonable debt service coverage factor of not less than 115% based on the results of the TAD Bond Feasibility Study. The TAD Bonds will be secured by a pledge of the Tax Allocation Increments, Local Option Sales Tax Revenues, the Private Payment Guarantee, the Special District Tax and certain funds established under the TAD Bond Documents, including a debt service reserve fund. The City's obligation to pay the TAD Bonds is limited to the revenues and other funds specifically pledged for such purpose. Additional terms of the TAD Bonds are described in more detail in Exhibit C. The City reserves the right to make changes to the financing structure set forth on Exhibit C so long as such changes do not impose additional financial requirements or other obligations on the Developer.

(b) Following the issuance of the initial series of TAD Bonds, the City agrees to open discussions with the Developer about the issuance of a subsequent series of TAD Bonds at such time as such subsequent series can be supported by Tax Allocation Increment based on contracts with Vertical Developers or otherwise, and, to the extent required, Local Option Sales Tax Revenues, all as provided in the Redevelopment Plan. In the event a subsequent series of TAD Bonds is issued by the City, the City and the Developer will negotiate new terms and conditions which will apply to such subsequent series of TAD Bonds.

7.2. **Private Payment Guarantee**{tc ""7.2PrivatePaymentGuarantee"" \f 67 \l 0"2"}



(a) As security for the TAD Bonds, the Developer will pay for and maintain, or cause to be paid for and maintained, a private payment guarantee, in the form agreed upon by the Developer and the City (the "*Private Payment Guarantee*") which may be drawn or realized upon by the Trustee solely to pay a portion of the principal of and interest on the TAD Bonds in the event that the Tax Allocation Increments and the Local Option Sales Tax Revenues are insufficient to pay the principal of and interest on the TAD Bonds. The Private Payment Guarantee will be in an amount not to exceed ten percent (10%) of the aggregate principal amount of the TAD Bonds with such amount being satisfactory to Bond Counsel under the requirements of federal tax law. The Private Payment Guarantee may be, a letter of credit issued by an entity with a credit rating, as determined by Standard & Poors, of A or better. In the event a letter of credit is selected, the issuing bank shall provide the City with sixty (60) days prior written notice of any expiration or termination thereof during the period that the Private Payment Guarantee is required to be in effect. The Developer's obligations to maintain such Private Payment Guarantee will continue in effect until the earlier to occur of:

(i) December 31, 2008; or

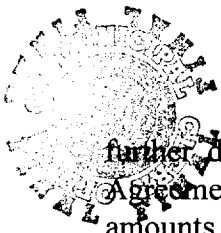
(ii) the beginning of the first Bond Year following three consecutive Bond Years in which the Tax Allocation Increments provide debt service coverage equal to 150% of the Maximum Annual Debt Service on the TAD Bonds.

(b) Not later than each January 15, the Authority will provide a written statement to the Developer setting forth the aggregate amount of Tax Allocation Increments (exclusive of recovery of any delinquencies from prior years) deposited for the immediately preceding fiscal year in the Special Fund created pursuant to the Act. If, based on such statement, the requirements set forth in Section 7.2(a)(ii) above are satisfied, and there does not exist an uncured Event of Default, then the Developer may terminate the Private Payment Guarantee on the earliest practicable date, and the City will take any and all action necessary to terminate the Private Payment Guaranty. Following such termination, the Developer will have no further obligations under this Section 7.2, even if the Tax Allocation Increments and the Local Option Sales Tax Revenues thereafter fail to satisfy any of the requirements.

### 7.3. Special District {tc "'7.3SpecialDistrict"' \f 67 \l 0"2"}.

(a) The City and the Developer acknowledge that the City has through an Ordinance 01-0-0223 adopted on February 19, 2001 created the Special District. The Developer hereby consents to the inclusion of the all of the Property within the Special District and acknowledges that the City in its sole discretion may enact increases or decreases in the Special District Tax.

(b) The DDA and the City agree that in order to further secure the TAD Bonds, the DDA will issue a debt instrument, such as a note or a bond, which will be delivered to and held by the Trustee (the "*DDA Note*") in form to be agreed upon by the City, counsel to the DDA and the City's bond counsel. Debt service will be due on the DDA Note only if and to the extent that amounts other than Special District Tax pledged to pay the TAD Bonds are insufficient to pay principal and interest due on the TAD Bonds (the "*TAD Bond Payment Deficiency*"), all as



further described in Exhibit C. The City and the DDA will agree in the Intergovernmental Agreement that the City will levy and collect the Special District Tax at such times and in such amounts as are necessary to remedy any TAD Bond Payment Deficiency.

(c) Notwithstanding the foregoing, the City's obligation to levy the Special Tax under the Intergovernmental Agreement shall terminate upon the earlier to occur of:

(i) December 31, 2008; and

(ii) the beginning of the first Bond Year following three consecutive Bond Years in which the Tax Allocation Increments provide debt service coverage equal to 150% of the Maximum Annual Debt Service on the TAD Bonds.

7.4. **Feasibility Studies** {tc ""7.4FeasibilityStudies"" \f 67 \l 0"2"}. In connection with the issuance of the TAD Bonds, the following reports will be prepared for the Project: (i) an independent appraisal of the bulk sale value of the Project Site; (ii) an independent appraisal of the proposed Mixed-Use Development in a market absorption study; (iii) an independent appraisal of the feasibility of the TAD Bond issue based in part on the reports required in clause (i) and (ii) (collectively, the "Feasibility Studies").

7.5 **Filing of 2002 Return**. On or before the TAD Closing, Developer agrees to file a return on each parcel comprising the Property with Fulton County Board of Tax Assessors, with return shall evidence Developer's valuation of the Property for ad valorem tax purposes for the tax year 2002 (the "2002 Return"). The 2002 Return for all parcels comprising the Property shall not be less than [\$150,000,000], subject only to upward adjustment on or before April 1, 2002, to an amount equal to Developer's total investment in the Property and the development of the Project and the Mixed Use Development incurred through December 31, 2001. Developer hereby agrees that Developer will not close any sale of Property to any Vertical Developer until the Developer has received evidence reasonably acceptable to the City that the 2002 Return has been accepted by the Fulton County Board of Tax Assessors. Developer further agrees that any agreement for the sale of portions of the Property to Vertical Developers which are affiliates of the Developer, AIGGREIC or the Member shall contain appropriate provisions in which such purchaser agrees that it will not appeal its pro rata share of the 2002 Return, and Developer agrees that Developer shall furnish the City with evidence reasonably satisfactory to the City of such covenant.

7.6 **Conditions to Issuance of the TAD Bonds**{tc ""7.5ConditionstoIssuanceoftheTADBonds"" \f 67 \l 0"2"}. The Developer hereby acknowledges and agrees that the City's, the Authority's and the DDA's obligations under this Agreement are contingent upon satisfaction of the following conditions on or prior to the issuance of the TAD Bonds:

(a) The City, the Authority, the DDA and the Developer shall have approved this Development Agreement, the TAD Bond Documents, the Support Agreement and the Transaction Documents to which they are parties.



(b) The City Council shall have adopted one or more resolutions or ordinances, as appropriate, authorizing the issuance of the TAD Bonds, approving the TAD Bond Documents in substantially final form and all other Transaction Documents to which the City is a party and authorizing the initiation of a validation proceeding for the TAD Bonds.

(c) The Superior Court of Fulton County, Georgia shall have entered a final order validating the issuance of the TAD Bonds pursuant to the financing structure generally described in this Agreement and more particularly described in the TAD Bond Documents.

(d) The County Commissioners and the School Board shall each have approved the Tax Payment Agreement.

(e) The City shall have received an opinion from its Bond Counsel that, among other things, the interest on the TAD Bonds will be excludable from gross income for federal and Georgia income tax purposes.

(f) No major federal legislation shall have been adopted or is pending which would have a material adverse affect on the interest rates in the tax-exempt municipal bond market.

(g) All representations, warranties, acknowledgments and covenants made by the Developer in this Agreement shall be true and correct in all material respects.

(h) No federal or state laws, statutes, governmental orders, regulations, rules or requirements shall have been enacted, adopted, issued or otherwise promulgated, and/or shall be in force, that would prevent the Mixed-Use Development as contemplated in this Agreement and the Master Plan.

(i) The Developer shall have furnished, and the City shall have approved, the Feasibility Studies, the Master Plan, the Plans, the Due Diligence Materials (or may available to the City for its review) the Project Budget, the Title Policy, Survey and the Environmental Report.

(j) The Developer shall have made the Due Diligence Materials available to the City for its review which the City shall have found acceptable.

(k) The Developer shall have presented evidence reasonably satisfactory to the City that:

(i) The Developer has acquired the Property from Atlantic Steel, Inc.;

(ii) The Developer has obtained the Construction Loan Commitment as provided in Section 6.3(b) of this Agreement;



- (iii) The Developer has obtained the Performance Bond as provided in Section 4.14 of this Agreement;
- (iv) The Developer has obtained the Calamity Insurance Policy or the Calamity Letter of Credit (or combination thereof) as provided in Section 4.14 of this Agreement;
- (v) The Developer has obtained the Private Payment Guarantee as provided in Section 7.2 of this Agreement; and
- (vi) The Developer shall file the 2002 Return.

(l) the City/Developer Bridge Agreement shall be in full force and effect and the Developer shall not be in default thereunder beyond any applicable cure period.

(m) The Project XL Agreement shall be in full force and effect and the Developer shall not be in default thereunder beyond any applicable cure period.

(n) The TCM shall be in full force and effect and the Developer shall not be in default thereunder.

(o) The Remediation Plan shall be in full force and effect and the Developer shall not be in default thereunder beyond any applicable cure period.

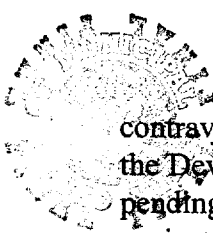
(p) All contracts with the Vertical Developer listed on Schedule 2.1 shall have been made available to the City and shall be in full force and effect.

(q) The receipt by the City and the Authority of a letter from the Engineer confirming to the City and the Authority the Developer's compliance to date with the Remediation Plan.

(r) The Developer shall have submitted (a) certified copies of its organizational documents, (b) a certificate of good standing from the jurisdiction in which the Developer was organized, together with evidence that the Developer is qualified to transact business and is in good standing in the State of Georgia.

(s) The Developer shall have submitted certified copies of its corporate resolutions or other evidence of its approval of this Agreement and the other Transaction Documents and authorizing their execution and delivery by an authorized officer.

(t) The Developer has provided to the City an opinion of legal counsel in form and substance satisfactory to the City to the effect that (a) this Agreement and any other major documents being executed by the Developer in connection with the TAD Closing (i) have been duly authorized by the Developer and will be valid, binding and enforceable against the Developer subject to standard enforceability exceptions and (ii) will not violate or otherwise



contravene the Developer's organizational documents or any agreement or instrument to which the Developer is a party or to which its property or assets are bound and (b) there is no litigation pending or, to such counsel's knowledge, threatened before any court or administrative agency against the Developer or the Property which, if adversely determined, would have a material adverse effect on the Project, the Mixed Use Development or the financial condition of the Developer.

(u) The Developer shall deliver a certificate to the Authority to the effect that the Developer is not in default under this Agreement or under any other Transaction Document to which it is a party and the Developer's representations and warranties set forth in this Agreement are true and correct.

7.7. Developer Conditions to Issuance of the TAD Bondstc "7.5DeveloperConditionstoIssuanceoftheTADBonds" f 67 l 0"2". The City, the Authority and the DDA hereby acknowledge and agree that the Developer's obligations under this Agreement are contingent upon the terms of the TAD Bonds and the TAD Bond Documents being reasonably satisfactory to the Developer at the time of issuance of the TAD Bonds.

7.8. Covenants as to Tax Exempt Statustc "7.5CovenantsastoTaxExemptStatus" f 67 l 0"2".

(a) To the extent within its control, the Developer will use commercially reasonable best efforts to take, or cause to be taken, such acts as from time to time may be required of it under applicable law or regulation in order that the interest on TAD Bonds continues to be excludable from gross income for purposes of federal and state income taxation, and refrain from taking any action which would adversely affect the exclusion from gross income of interest on the TAD Bonds from federal and state income taxation.

(b) To the extent within its control, the City will use commercially reasonable best efforts to take, or cause to be taken, such acts as from time to time may be required of it under applicable law or regulation in order that the interest on TAD Bonds continues to be excludable from gross income for purposes of federal and state income taxation, and refrain from taking any action which would adversely affect the exclusion from gross income of interest on the TAD Bonds from federal and state income taxation.

(c) To the extent within its control, the Authority will use commercially reasonable best efforts to take, or cause to be taken, such acts as from time to time may be required of it under applicable law or regulation in order that the interest on TAD Bonds continues to be excludable from gross income for purposes of federal and Georgia income taxation, and refrain from taking any action which would adversely affect the exclusion from gross income of interest on the TAD Bonds from federal and state income taxation.

(d) To the extent within its control, the DDA will use commercially reasonable best efforts to take, or cause to be taken, such acts as from time to time may be required of it under applicable law or regulation in order that the interest on TAD Bonds continues to be





excludable from gross income for purposes of federal and state income taxation, and refrain from taking any action which would adversely affect the exclusion from gross income of interest on the TAD Bonds from federal and state income taxation.

7.9. **Limited Liability**{tc ""7.5LimitedLiability"" \f 67 \l 0"2"}.

(a) The City, the Authority and the DDA will have no obligation to repay any TAD Bonds or the DDA Note except from the sources and security specifically pledged therefor under the TAD Bond Documents and under the DDA Notes pursuant to which the TAD Bonds and DDA Note are issued. The liability of the City, the Authority and the DDA shall be limited to such sources so pledged. Except as specifically provided in any guaranty or other security for the TAD Bonds provided by the Developer, the Developer will have no liability whatsoever with respect to payment of any TAD Bonds.

(b) To the extent permitted by Georgia law, no director, officer, employee or agent of the City, the Authority, the DDA or the Developer, will be personally responsible for any liability arising under or growing out of this Agreement.

## ARTICLE VIII

### **REQUISITION AND DISBURSEMENT OF FUNDS**{tc

""ARTICLEVIII REQUISITION AND DISBURSEMENT OF FUNDS"" \f 67 \l 0"1"}.

8.1 **Conditions to Advancement or Reimbursement of Project Funds**{tc ""8.1ConditionstoAdvancementorReimbursementofProjectFunds"" \f 67 \l 0"2"}. The Authority shall not be obligated to advance any portion of the Project Funds for the payment of Redevelopment Costs under the requisition procedures set forth in Section 8.2 or reimburse Developer for Redevelopment Costs previously incurred unless the following conditions have been satisfied or exist:

(i) The Construction Loan Closing shall have occurred and the proceeds of the Construction Loan shall be available to be drawn upon by Developer.

(ii) The Developer shall not be in default beyond any applicable cure period under this Agreement or under any of the other Transaction Documents to which the Developer is a party.

(iii) The Authority shall have inspected and approved the Work for which reimbursement is being requested or waived its right of inspection.

(iv) No Governmental Body shall have issued the equivalent of a stop-work order with respect to any portion of the Project.



**8.2 Disbursement of Project Funds** {tc ""8.2DisbursementofProjectFunds"" \f 67 \l 0"2"} Developer will use Project Funds solely to pay or reimburse itself for Redevelopment Costs incurred by Developer with respect to the Project, all as evidenced by requisitions and certificates as provided in this Section. As conditions precedent to each disbursement, Developer will file with the Authority:

(a) A requisition, signed by a Developer Representative, stating the name of the Person to whom the payment is to be made, the amount of the payment and the purpose in reasonable detail for which the obligation to be paid was incurred.

(b) A certificate attached to the requisition, signed by a Developer Representative, stating that:

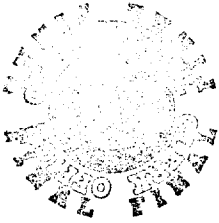
(i) The obligation stated on the requisition has been incurred to pay Redevelopment Costs, each item is a proper charge against the Project included in the Project Budget and is a Redevelopment Cost permitted under the Act and the obligation has not been the basis for a prior requisition that has been paid; and

(ii) At the date of the certificate, no Event of Default under this Agreement has occurred which has not been cured or waived, and no event exists which, with notice or lapse of time or both, would constitute an Event of Default.

(c) An invoice, a copy of an invoice or other appropriate evidence of the obligation described in the requisition required by this Section.

Upon receipt of each such requisition, certificate and invoice or other evidence, the Authority will use commercially reasonable best efforts to cause the Trustee within ten (10) days of such receipt to make payment in accordance with such requisition; provided such requisition is submitted in compliance with the terms of this Agreement.

**8.3 Disposition of Balance of Project Funds** {tc ""8.3DispositionofBalanceofProjectFunds"" \f 67 \l 0"2"} If the Developer has not requisitioned all Project Funds by the end of the third year after the date of issuance of series of TAD Bonds to which such Project Funds relate, the City may in its discretion use the Project Funds for other lawful purposes and Developer shall have no further claim to such funds.



## ARTICLE IX

### **REPRESENTATIONS AND WARRANTIES** {tc ""ARTICLEIXREPRESENTATIONSANDWARRANTIES"" \f 67 \l 0"1"} }

**9.1 From the City**{tc ""9.1FromtheCity"" \f 67 \l 0"2"} }. The City hereby represents and warrants that:

(a) The City is a municipal corporation duly created and existing under the laws of the State and is duly qualified and authorized to carry on the undertakings contemplated by this Agreement, including issuance of TAD Bonds.

(b) The City has the requisite power and authority to execute and deliver this Agreement, to incur and perform its obligations hereunder, and to carry out the transactions contemplated by this Agreement.

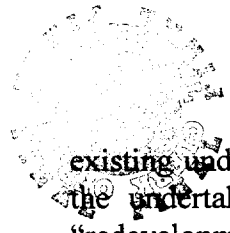
(c) The execution, delivery, and performance of this Agreement has been duly authorized by all necessary action and proceedings by or on behalf of the City, and except for the proceeding to be initiated in the Fulton County Superior Court to validate the issuance of the TAD Bonds, no further approvals or filings of any kind, including any approval of or filing with any Governmental Authority, are required by or on behalf of the City as a condition to the valid execution, delivery, and performance by the City of this Agreement.

(d) Except for the proceeding to be initiated in the Fulton County Superior Court to validate the issuance of the TAD Bonds, there are no actions, suits, proceedings or investigations of any kind pending or, to its knowledge, threatened against the City before any court, tribunal or administrative agency or board or any mediator or arbitrator that questions the validity of this Agreement or any action taken or to be taken pursuant hereto.

(e) City Resolution 99-R-1344, adopted by the Council on October 4, 1999 and approved by the Mayor on October 5, 1999 has been validly adopted, remains in full force and effect, and has not been amended or supplemented since the date of its adoption. To the best of its knowledge, no amendment of or supplement to the Resolution is contemplated by the City or to the resolutions referred to previously herein adopted by the County and the School Board with respect to the Atlantic Steel TAD.

(f) Ordinance 01-0-0223 entitled "An Ordinance to Create the Atlantic Station Special District and for Other Purposes" adopted by the Council on February 19, 2001 and approved by the Mayor on February 24, 2001 has been validly adopted, remains in full force and effect, and has not been amended or supplemented since the date of its adoption, and, pursuant thereto, the Atlantic Station Special District has been validly created.

**9.2 From the Authority**{tc ""9.2FromtheAuthority"" \f 67 \l 0"2"} }. The Authority hereby represents and warrants that:



(a) The Authority is a public body corporate and politic duly created and existing under the laws of the State of Georgia and is duly qualified and authorized to carry on the undertakings contemplated by this Agreement. The Authority is the duly authorized "redevelopment agency" for the Atlantic Steel TAD within the meaning of the Act.

(b) The Authority has the requisite power and authority to execute and deliver this Agreement, to incur and perform its obligations hereunder, and to carry out the transactions contemplated by this Agreement.

(c) The execution, delivery, and performance of this Agreement has been duly authorized by all necessary action and proceedings by or on behalf of the Authority, and no further approvals or filings of any kind, including any approval of or filing with any governmental authority, are required by or on behalf of the Authority as a condition to the valid execution, delivery, and performance by the Authority of this Agreement.

(d) There are no actions, suits, proceedings or investigations of any kind pending or, to its knowledge, threatened against the Authority before any court, tribunal or administrative agency or board or any mediator or arbitrator that questions the validity of this Agreement or any action taken or to be taken pursuant hereto.

9.3 **From the DDA**{tc "9.3FromtheDDA" \f 67 \l 0"2"}. The DDA hereby represents to the Developer and the City that:

(a) The DDA is a public body corporate and politic duly created and existing under the laws of the State of Georgia and is duly qualified and authorized to carry on the undertakings contemplated by this Agreement.

(b) The DDA has the requisite power and authority to execute and deliver this Agreement, to incur and perform its obligations hereunder, and to carry out the transactions contemplated by this Agreement.

(c) The execution, delivery, and performance of this Agreement has been duly authorized by all necessary action and proceedings by or on behalf of the DDA, and no further approvals or filings of any kind, including any approval of or filing with any governmental authority, are required by or on behalf of the DDA as a condition to the valid execution, delivery, and performance by the DDA of this Agreement.

(d) There are no actions, suits, proceedings or investigations of any kind pending or, to its knowledge, threatened against the DDA before any court, tribunal or administrative agency or board or any mediator or arbitrator that questions the validity of this Agreement or any action taken or to be taken pursuant hereto.

9.4 **From Developer**{tc "9.4FromDeveloper" \f 67 \l 0"2"}. Developer hereby represents and warrants that:



(a) Organization and Authority. The Developer is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Delaware, and the Developer has all requisite power and authority to execute, deliver and perform its duties under this Agreement and the Transaction Documents to which it is a party. The sole member of the Developer is Jacoby Atlantic Redevelopment, L.L.C. (*the "Member"*). The Member is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Georgia.

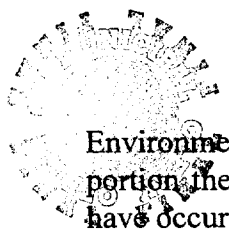
(b) Due Authorization Execution and Delivery; Compliance with Laws.  
(i) The execution, delivery and performance by Developer of this Agreement and the other Transaction Documents to which it is a party are within the Developer's powers and have been duly authorized by all necessary action; (ii) the execution and delivery of such documents on behalf of the Developer does not require any governmental approvals or the consent of any Person not already obtained; and (iii) the execution, delivery, and, upon obtaining all required governmental approvals, the performance of such documents by the Developer does not violate or result in a breach of any Applicable Law or constitute a default or violation under the Developer's operating agreement or bylaws or any material agreement to which the Developer is a party or by which the Developer is bound.

(c) Organizational Documents. Developer's organizational documents are in full force and effect and have not been modified or supplemented, and no fact or circumstance has occurred that, by itself or with the giving of notice or the passage of time or both, would constitute a default thereunder.

(d) Enforceability. This Agreement and the other Transaction Documents to which the Developer is a party, when duly executed and delivered by each party thereto, are valid, binding and are enforceable against the Developer in accordance with their respective terms, except as such enforceability may be effected by applicable conservatorship, bankruptcy, insolvency, reorganization, moratorium or similar laws effecting the enforcement of creditor's rights generally.

(e) Financial Statements. All Financial Statements and information furnished to the City and the Authority or to which they have been given access by Developer with respect to Developer and the Project fairly present the financial condition of Developer and the Project as of the dates thereof. To the best of Developer's knowledge, and all other written information furnished to the City and the Authority by Developer is accurate, complete and correct in all material respects and does not contain any material misstatement of fact or omit to state any fact necessary to make the statements contained therein not misleading.

(f) Title to Property. The Developer is the sole owner of, and possesses good and marketable fee simple title to, the Property. The Developer has, fully disclosed to the City in writing all material liabilities which are currently attached or, to the best of its knowledge, will attach to title to the Property.



(g) Environmental. Developer, has no knowledge, except as disclosed in the Environmental Report: (i) of the presence of any Hazardous Substances on the Property, or any portion thereof, or of any spills, releases, discharges, or disposal of Hazardous Substances that have occurred or are presently occurring on or onto the Property, or any portion thereof, or (ii) of the presence of any PCB transformers serving, or stored on, the Property, or any portion thereof, and Developer has no knowledge of any failure to comply with any applicable local, state and federal environmental laws, regulations, ordinances and administrative and judicial orders relating to the generation, recycling, reuse, sale, storage, handling, transport and disposal of any Hazardous Substances. Developer has complied with all Environmental Laws, the Remediation Plan, the TCM and the State Implementation Plan.


(h) Bankruptcy. No Act of Bankruptcy has occurred with respect to Developer, or the sole member of the Developer.

(i) Representations Relating to TAD Bond Financing. The Developer shall make such customary applicable disclosures, representations or warranties relating to the Property and the Project in connection with the issuance of the TAD Bonds, as and when requested by the Authority or the City.

(j) No Litigation. There is no action, suit or proceeding pending or, to the knowledge of Developer, threatened against or affecting Developer, the Project or The Mixed Use Development in any court, before any arbitrator or before or by any Governmental Body which (i) in any manner raises any question affecting the validity or enforceability of this Agreement or any other agreement or instrument to which Developer is a party or by which it is bound and that is or is to be used in connection with, or is contemplated by, this Agreement, (ii) could materially and adversely affect the business, financial position or results of operations of Developer, (iii) could materially and adversely affect the Project or the construction of the Mixed Use Development or (iv) could materially and adversely affect the ability of Developer to perform its obligations hereunder, or under any Transaction Document to which the Developer is a party.

(k) No Undisclosed Liabilities. Except for liabilities disclosed in the most recent Financial Statements Property or as set forth in Schedule 9.4 attached hereto, neither Developer nor the Property is subject to any material liability or obligation, including contingent liabilities which would have a material adverse affect on the ability of the Developer to perform its obligations under this Agreement. To the best of Developer's knowledge, Developer is not in default under or in breach of any material contract or agreement, and no event has occurred which, with the passage of time or giving of notice (or both) would constitute such a default which has a material adverse effect on the ability of Developer to perform its obligations under this Agreement.

(l) Tax Matters. Developer has prepared and filed in a substantially correct manner or has obtained an extension for all federal, state, local, and foreign tax returns and reports heretofore required to be filed by it and has paid all taxes shown as due thereon and has paid all real estate taxes associated with the Property. No Governmental Body has asserted any



deficiency in the payment of any tax or informed Developer that such Governmental Body intends to assert any such deficiency or to make any audit or other investigation of Developer for the purpose of determining whether such a deficiency should be asserted against Developer.

(m) ERISA and Related Matters. Developer does not maintain any retirement or deferred compensation plan, savings, incentive, stock option or stock purchase plan, unemployment compensation plan, vacation pay, severance pay, bonus or benefit arrangement, insurance or hospitalization program or any other fringe benefit arrangement for any employee, consultant or agent of Developer, whether pursuant to contract, arrangement, custom or informal understanding, which does not constitute an "Employee Benefit Plan" (as defined in § 3(3) of ERISA). Developer does not maintain nor has Developer ever contributed to any Multiemployer Plan (as defined in § 3(37) of ERISA). Developer does not currently maintain any Employee Pension Benefit Plan subject to Title IV of ERISA. There have been no "prohibited transactions" (as described in §406 of ERISA or §4975 of the Internal Revenue Code) with respect to any Employee Pension Benefit Plan or Employee Welfare Benefit Plan maintained by Developer as to which Developer has been a party.

(n) Principal Office. The current principal address of the Developer's chief executive office and principal place of business is 1349 West Peachtree Street, Suite 1700, Atlanta, Georgia 30309.

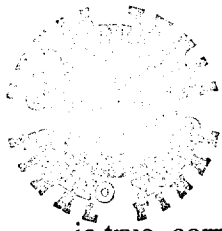
(o) Licenses and Permits. Developer has or, to the best of Developer's knowledge shall be able to obtain all licenses and permits, adequate for the conduct of its business substantially as now conducted or as it is intended to be conducted with respect to the Project. Developer has no reason to believe that it will not be able to obtain any licenses or permits which it will be required to obtain in connection with the Project.

(p) Project Location. To the best of Developer's knowledge, the Project is located wholly within the Atlantic Steel TAD and the Special District.

(q) Utilities. All utility services which will be necessary for development of the Project as currently contemplated by the Developer, are, or, to the best of Developer's knowledge, at all times will be, available through dedicated public rights of way or through perpetual private easements.

(r) Rights of Way. The rights of way for all roads under the control of the Developer necessary for the full utilization of the Project for its intended purposes have been acquired.

(s) Master Plan; Plans and Specifications. The Developer has furnished or made available to the City true and complete sets of the Master Plan and the Plans, and the Infrastructure Plans have been approved by the appropriate Governmental Body as is required for the construction of the Horizontal Infrastructure Improvements.



(t) Project Budget. The Project Budget provided by the Developer to the City is true, correct and complete and to Developer's best knowledge provides reasonable estimates of costs of the Project to date.

(u) Survey. To the best of the Developer's knowledge, the Survey for the Project delivered to the City does not fail to reflect any material matter of survey affecting the Project or the title thereto.

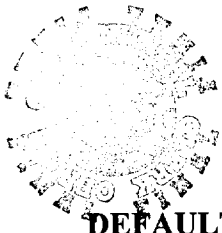
(v) Agreements with Vertical Developers. Each of the agreements with Vertical Developers described on Schedule 2.1 attached hereto is in full force and effect, and neither the Developer nor, to the best knowledge of Developer, any other party thereto is in default or breach in any material respect under the terms of any such agreement, and no event or circumstance has occurred that, with notice or lapse of time or both, would constitute any event of default thereunder. Except for those conditions to closing set forth on Schedule 9.4 attached hereto, all conditions to closing described in such agreements set forth on Schedule 2.1 have been satisfied. True and complete copies of each such agreement set forth on Schedule 2.1 have been delivered to the City.

(w) City/Developer Bridge Agreement. The City/Developer Bridge Agreement is in full force and effect, and neither Developer nor, to the best knowledge of Developer, the City is in default or breach in any material respect under the terms of such agreement, and no event or circumstance has occurred that, with notice or lapse of time or both, would constitute any event of default thereunder.

(x) 17<sup>th</sup> Street Bridge. To the best knowledge of the Developer, all approvals for the construction of the 17<sup>th</sup> Street Bridge from all Governmental Bodies have been received and the necessary funding for the construction of the 17<sup>th</sup> Street Bridge has been appropriated for such construction and the only approval which has not been obtained for the construction of the 17<sup>th</sup> Street Bridge is the entering into by the Georgia Department of Transportation of a contract with a commercial construction company for the construction of the 17<sup>th</sup> Street Bridge. Developer is not aware of any fact or set of circumstances that would lead it to believe that the construction of the 17<sup>th</sup> Street Bridge will not occur or that the Georgia Department of Transportation will not enter into a contract with a commercial construction company for the construction of the 17<sup>th</sup> Street Bridge.

(y) Full Disclosure. To the best of Developer's knowledge, all factual statements set forth in the representations and warranties of the Developer in this Agreement or any schedule, exhibit, certificate or document prepared by the Developer pursuant to the provisions of this Agreement are true in all material respects as of the date of the execution of this Agreement.





## ARTICLE X

### **DEFAULTS AND REMEDIES**{tc ""ARTICLEXDEFAULTSANDREMEDIES"" \f 67 \l 0"1"}\}

10.1 **Developer's Default**{tc ""10.1Developer'sDefault"" \f 67 \l 0"2"}\}. Developer will be deemed to have committed a default under this Agreement should any one or more of the following events occur at any time:

(a) Failure of Developer to materially and timely comply with and perform each of Developer's obligations set forth in this Agreement.

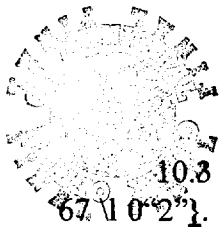
(b) A default by Developer under, or failure of the Developer to comply with any material obligation of Developer set forth in the Project XL Agreement, the Remediation Plan, the City/Developer Bridge Agreement, any agreement with a Vertical Developer or any other Transaction Document.

(c) If any representation or warranty made by Developer in this Agreement or subsequently made by Developer in any written statement or document furnished to the City or the Authority and related to the transactions contemplated by this Agreement is false, incomplete, inaccurate or misleading in any material respect.

(d) If any report, certificate or other document or instrument furnished to the City or the Authority by Developer or at the request of Developer in relation to the transactions contemplated by this Agreement is false, inaccurate or misleading in any material respect and the Developer knows or should have known that such report, certificate or other document furnished to the City or the Authority is false, inaccurate or misleading, and fails to promptly report such discrepancy to Authority.

(e) An Act of Bankruptcy by or on behalf of Developer.

10.2 **Authority's Remedies**{tc ""10.2Authority'sRemedies"" \f 67 \l 0"2"}\}. Should any default on behalf of Developer occur and be continuing thirty (30) days after receipt of written notice by Developer from Authority specifying the existence of such default (or within a reasonable time thereafter if such default cannot reasonably be cured within such thirty (30) day period and Developer begins to diligently pursue the cure of such default within such thirty (30) day period), the default shall become an "Event of Default", and Authority shall be entitled to elect any or all of the following remedies: (i) termination of this Agreement and discontinuation of funding hereunder, (ii) seek any remedy at law or in equity that may be available as a consequence of Developer's default; (iii) pursuit of specific performance of this Agreement or injunctive relief; or (iv) waiver of such Event of Default. Notwithstanding the foregoing, before seeking any judgment for damages or seeking specific performance, the City and/or the Authority shall make a claim and pursue remedies under the Performance Bond during the performance time specified in the Performance Bond. If such claim is denied or the remedy provided inadequate or unavailable, the City and/or the Authority may then pursue any remedy available under this Agreement.



**10.3 Construction Lender Cure Rights**fc ""10.3ConstructionLenderCureRights"" \f 67 \l 0"2". If the City or the Authority shall elect to terminate this Agreement by reason of any Event of Default of Developer, the termination shall not become effective if, within the sixty (60) day period after the date of such election to terminate, the Construction Lender shall (i) notify the City or the Authority of the Construction Lender's desire to cure the Event of Default; (ii) pay or cause to be paid all amounts then in arrears from Developer under this Agreement; (iii) comply, or in good faith with reasonable diligence and continuity commence to comply, with all non-monetary requirements of this Agreement that are reasonably susceptible of being complied with by the Construction Lender and prosecute such cure to its completion. If the Construction Lender is unable to effect cure within such sixty (60) day period because it has not been able to obtain possession of the Project from Developer, the termination shall not be effective if the Construction Lender has initiated and for so long as the Construction Lender is diligently pursuing foreclosure or similar proceeding, and, once Construction Lender is able to commence such cure, to diligently and continuously thereafter do so.

**10.4 Authority's Default**fc ""10.4Authority'sDefault"" \f 67 \l 0"2". The Authority will be deemed to have committed a default under this Agreement should any one or more of the following events occur at any time:

(a) Failure of the Authority to materially and timely comply with and perform all of the Authority's obligations set forth in this Agreement.

(b) If any representation or warranty made by the Authority in this Agreement or subsequently made by the Authority in any written statement or documents in any documents relating to the TAD Bonds is false, incomplete, inaccurate or misleading in any material respect.

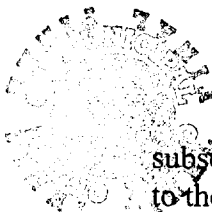
**10.5 City's Default**fc ""10.5City'sDefault"" \f 67 \l 0"2". The City will be deemed to have committed a default under this Agreement should any one or more of the following events occur at any time:

(a) Failure of the City to materially and timely comply with and perform all of the City's obligations set forth in this Agreement.

(b) If any representation or warranty made by the City in this Agreement or subsequently made by the City in any written statement or documents in any documents relating to the TAD Bonds is false, incomplete, inaccurate or misleading in any material respect.

**10.6 DDA's Default**fc ""10.6DDA'sDefault"" \f 67 \l 0"2". The DDA will be deemed to have committed a default under this Agreement should any one or more of the following events occur at any time:

(a) Failure of the DDA to materially and timely comply with and perform all of the DDA's Obligations set forth in this Agreement.



(b) If any representation or warranty made by the DDA in this Agreement or subsequently made by the DDA in any written statement or documents in any documents relating to the TAD Bonds is false, incomplete, inaccurate or misleading in any material respect.

**10.7 Remedies on the Authority's, DDA's or City's Default**  
Should any default on behalf of the Authority, the DDA or the City occur and be continuing sixty (60) days after receipt of written notice by the defaulting party from the Developer specifying the existence of such default (or within a reasonable time thereafter if such default cannot reasonably be cured within such 60-day period and the defaulting party begins to diligently pursue the cure of such default within such 60-day period), the default shall become an Event of Default, and the Developer, as its sole and exclusive remedies, shall be entitled to elect any or all of the following remedies: (i) pursuit of specific performance of the defaulting party's obligations under this Agreement or (ii) pursuit of any other remedy permitted at law or in equity.

**10.8 Agreement to Pay Attorneys' Fees and Expenses**  
If, with respect to any Event of Default, the non-defaulting party employs attorneys or incurs other expenses for the collection of amounts due hereunder or for the enforcement of the performance or observance of any covenants or agreements on the part of the defaulting party contained herein, the defaulting party agrees that it will on demand therefor pay to the non-defaulting party the reasonable fees of such attorneys and such other reasonable expenses so incurred by the non-defaulting party, the amount of such fees of attorneys to be without regard to any statutory presumption.

## ARTICLE XI

### INDEMNIFICATION

**11.1 Indemnification**  
(a) Developer hereby releases the Authority and the City (including any person at any time serving as a member, employee, officer, trustee, official or agent of any thereof) from and agrees that the Authority, the DDA and the City (including any person at any time serving as a member, employee, officer, trustee, official or agent of any thereof (individually, an "Indemnified Person")) shall not be liable for, and to the maximum extent permitted by law, agrees to indemnify and hold the Authority, the DDA and the City (including any person at any time serving as a member, employee, officer, trustee, official or agent of any thereof) harmless from: (a) any liabilities, losses or damages, claims therefor and expenses (including attorneys' fees and expenses), including, without limitation, any loss or damage to property or any injury to, or death of, any person, arising out of or in connection with the Property, the Project or the Mixed Use Development or that may be occasioned by any cause whatsoever pertaining to the Property, the Project or the Mixed Use Development and (b) any liabilities, losses or damages, or claims therefor, and expenses (including attorneys' fees and expenses), arising out of or in connection with this Agreement, any Transaction Document, any agreement with a Vertical Developer or any of the transactions contemplated hereby or thereby or failure on the part of the Developer to comply with any law, regulation or ordinance affecting the Property, the Project or the Mixed



Use Development, except, in each case, any liability or claims and the related expenses arising from the gross negligence, willful misconduct, recklessness or intentional act or omission of the party seeking indemnification.

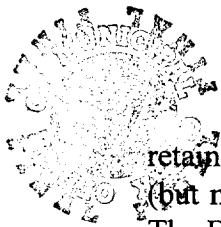
(b) Developer shall indemnify, defend and hold the Authority, the DDA and the City harmless from and against any and all Third Party Claims including, without limitation, investigation, response, remediation, and similar costs, as well as attorneys' fees suffered by Authority and/or the City as a result of Environmental Law and arising in whole or in part from (a) the presence of any Hazardous Substances on the Property, (b) any release of any Hazardous Substance to, from, by, under, across, over or through the Property, (c) any claims of third parties or (d) any breach by Developer of any representation as to the status or condition of the Property.

(c) If any such claim is asserted under Section 11.1 or 11.2, any individual indemnified herein will give prompt notice to the Developer and will cooperate with the Developer in the investigation and defense of any such claim, and the Developer will assume the defense thereof by engaging counsel approved by the indemnified party (which approval shall not be unreasonably withheld), it being understood that the indemnified party shall have the right to employ its own separate counsel and participate in such proceedings at its own cost and expense. The Developer shall at its cost post such bond or other security as the Authority, the DDA or the City or any individual indemnified hereunder may reasonably require with respect to any such claim during the pendency of any litigation. This indemnification covenant contained in this Section 11.1 shall survive the Term hereof.

11.2 **Notice of Claim**{tc ""11.2NoticeofClaim"" \f 67 \l 0"2"}. If an indemnified party or the Developer receives notice of any claim or circumstance which could give rise to indemnified Losses, the receiving party must give written notice to the other party within ten (10) days. The notice must include a description of the indemnification event in reasonable detail, the basis on which indemnification may be due, and the anticipated amount of the indemnified loss. This notice will not estop or prevent an indemnified party from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If an indemnified party does not provide this notice within the ten (10) day period, it does not waive any right to indemnification except to the extent that Developer is prejudiced, suffers loss, or incurs expense because of the delay.

11.3 **Defense**{tc ""11.3Defense"" \f 67 \l 0"2"}. The Developer may assume and control the defense of the claim based on an indemnified loss at its own expense with counsel chosen by the Developer with the concurrence of the indemnified party. The Developer will also control any negotiations to settle the claim. Within ten (10) days after receiving written notice of the indemnification request, the Developer will advise the indemnified party as to whether or not it will defend the claim. If the Developer does not assume the defense, the indemnified party will assume and control the defense and all defense expenses actually incurred by it will constitute Losses.

11.4 **Separate Counsel**{tc ""11.4SeparateCounsel"" \f 67 \l 0"2"}. If the Developer elects to defend a claim, the Indemnified Person indemnification (the "Indemnified Person") may



retain separate counsel, at the sole cost and expense of such Indemnified Person, to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. The Developer may settle the claim without the consent or agreement of the Indemnified Person, unless the settlement (i) would result in injunctive relief or other equitable remedies or otherwise require the Indemnified Person to comply with any restrictions or limitations, (ii) would require the Indemnified Person to pay amounts that the Developer does not fund in full, (iii) would not result in the Indemnified Person's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement, or (iv) would result in any public or other official statement that would be or could be attributed to the Indemnified Party.

## ARTICLE XII

### **MISCELLANEOUS PROVISIONS**{tc ""ARTICLEXIADMINISTRATIVEPROVISIONS"" \f 67 \l 0"1"} }

12.1 **Applicable Law; Forum**{tc ""11.1ApplicableLaw;Forum"" \f 67 \l 0"2"} }. This Agreement will be construed, enforced and performed in accordance with the laws of the State of Georgia, without regard to choice of law rules. All legal actions relating to this Agreement shall be instituted and litigated in the state or federal courts sitting in the City.

112.2 **Status of Parties**{tc ""11.2StatusofParties"" \f 67 \l 0"2"} }. Nothing in this Agreement or in the relationship of the City, the Authority, the DDA or the Developer as created by this Agreement or any other agreement shall be deemed or construed by the parties hereto or by any third person to create the relationship of a partnership or joint venture between the City, the DDA, the Authority and the Developer and in no event shall the Developer hold itself out to be an agent of the City, the Authority or the DDA.

112.3 **Effect of Termination**{tc ""11.3EffectofTermination"" \f 67 \l 0"2"} }. Upon termination of this Agreement, neither the Developer, the City, the Authority nor the DDA shall have any further obligations or liabilities under this Agreement.

112.4 **Survival**{tc ""11.4Survival"" \f 67 \l 0"2"} }. The provisions of Article XI and 12.8 of this Agreement shall survive any expiration or termination of this Agreement.

112.5 **Notices**{tc ""11.5Notices"" \f 67 \l 0"2"} }. Any notice required or permitted by or in connection with this Agreement shall be in writing and shall be made by facsimile or by hand delivery, or by Federal Express or other similar nationally recognized delivery service, or by pre-paid certified mail (return receipt requested), addressed to the respective parties at the appropriate address set forth below or to such other address as may be hereafter specified by written notice by the respective parties given in compliance with this Section. If notice, request or similar communication is given in compliance with this Section and is refused, or intentionally evaded by the intended recipient thereof, the notice, request or similar communication, nevertheless, shall be considered to have been given and shall be effective as of the date given as herein provided.



To the City:

City Attorney  
City of Atlanta  
Department of Law  
68 Mitchell Street  
Suite 4100  
Attention: Susan Pease Langford  
Facsimile: 404/658-6894

To Authority:

Atlanta Development Authority  
86 Pryor Street, S.W.  
Suite 300  
Atlanta, Georgia 30303  
Attention: Kevin Hanna  
Facsimile: 404/589-8630

To the DDA:

Downtown Development Authority  
of the City of Atlanta  
86 Pryor Street, S.W.  
Suite 300  
Atlanta, Georgia 30303  
Attention:  
Facsimile:

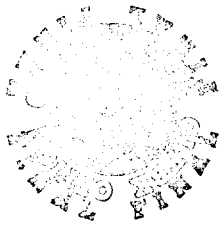
To Developer:

Atlantic Station, L.L.C.  
1349 W. Peachtree Street, Suite 1770  
Atlanta, GA 30309  
Attention: President  
FAX: 404-876-8628

With copies to:

Morris, Manning & Martin LLP  
1600 Atlanta Financial Center  
3343 Peachtree Road, N.E.  
Atlanta, GA 30326  
Attention: Jeanna A. Brannon, Esq.  
FAX: 404-365-9532

Long Aldridge & Norman LLP  
303 Peachtree Street, N.E., Suite 5300  
Atlanta, GA 30308  
Attention: Steven J. Labovitz, Esq.  
Sharon A. Gay, Esq.  
FAX: 404-527-4198



Jacoby Development, Inc.  
1000 Abernathy Road  
Suite 1250  
Atlanta, GA 30328  
Attention: James F. Jacoby  
FAX: 770-206-9150

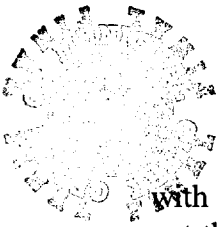
AIG Global Real Estate Investment Corp.  
1 Chase Manhattan Plaza, 57<sup>th</sup> Floor  
New York, New York 10005  
Attention: President  
FAX: 212-514-5228

AIG Global Real Estate Investment Corp.  
1 Chase Manhattan Plaza, 57<sup>th</sup> Floor  
New York, New York 10005  
Attention: General Counsel  
FAX: 212-514-5228

112.6 **Successors in Interest**{tc ""11.6SuccessorsinInterest"" \f 67 \l 0"2"}. This Agreement will be binding on and inure to the benefit of the parties and their respective successors and assigns; provided, however, the rights and obligations of Developer under this Agreement cannot be assigned by Developer (by operation or law or otherwise) without the prior written consent of Authority, except Developer may assign its rights hereunder to the Construction Lenders as additional collateral or security for the Construction Loan.

112.7 **Modification and Waiver**{tc ""11.7ModificationandWaiver"" \f 67 \l 0"2"}. No modification or waiver of any provision of this Agreement, and no consent by any party to any departure from the provisions of this Agreement, will be effective unless such modification or waiver is in writing and signed by a duly authorized representative of each party hereto. Any such modification or waiver will be effective only for the period and on the condition and for the specific instances and purposes set forth in such writing. No waiver of any condition, breach, default or Event of Default will be deemed to be a waiver of any subsequent condition, breach, default or Event of Default. No omission or delay by any party in exercising any right or power under this Agreement, will impair such right or power or be construed to be a waiver of any default or Event of Default or any acquiescence therein.

112.8 **Broker's Commissions**{tc ""11.8Broker'sCommissions"" \f 67 \l 0"2"}. Developer, the City, the DDA and the Authority represent and warrant to each other that they have not dealt with a broker, salesperson or finder with respect to this Agreement or the transactions contemplated herein, and that no fee or brokerage commission will become due by reason of the transactions contemplated by this Agreement. The parties will indemnify, defend and hold harmless each other from all costs, liabilities, expenses and reasonable attorney's fees arising out of the breach of this Section.



112.9 **Cooperation**{tc ""11.9Cooperation"" \f 67 \l 0"2"}. The parties will cooperate with each other, to the extent permitted by Applicable Law, in every reasonable way in carrying out the transactions contemplated by this Agreement, in fulfilling all of the conditions to be met by the parties in connection with this Agreement, and in obtaining and delivering all documents required hereunder. In addition, the parties will cooperate with each other, to the extent permitted by Applicable Law, in obtaining all Land Use Approvals and the Construction Permits.

112.10 **Headings**{tc ""11.10Headings"" \f 67 \l 0"2"}. The Section headings contained in this Agreement are for the convenience of the parties only and are not a part of the substantive agreement between the parties, nor will such headings be used in the interpretation or construction of any of the provisions of this Agreement.

112.11 **Counterparts**{tc ""11.11Counterparts"" \f 67 \l 0"2"}. This Agreement may be executed in any number of counterparts and all counterparts taken together will be deemed to constitute one and the same instrument.

112.12 **Fees and Expenses**{tc ""11.12FeesandExpenses"" \f 67 \l 0"2"}. Except as is otherwise provided in this Agreement, each party hereto shall pay its own legal fees and expenses. Developer shall pay for preparation of the documents to be delivered by Developer hereunder and for any costs associated with any corrective instruments.

112.13 **Entire Agreement**{tc ""11.13EntireAgreement"" \f 67 \l 0"2"}. This Agreement is intended to be a complete, exclusive and final expression of the parties' agreements concerning the subject matter of this Agreement, merging and replacing all prior and contemporaneous negotiations, offers, representations, warranties and agreements. No course of prior dealing between the parties, no usage or trade customs, and no parol or extrinsic evidence of any nature will be used to supplement or modify any of the terms of this Agreement.

112.14 **Waiver of Conditions**{tc ""11.14WaiverofConditions"" \f 67 \l 0"2"}. Each party to this Agreement, in its sole discretion, may waive in writing, in whole or in part, any condition, covenant, representation or warranty which inures to its benefit set forth in this Agreement.

112.15 **Agreement to Rezone or Approve Developer's Plans**{tc ""11.15AgreementtoRezoneorApproveDeveloper'sPlans"" \f 67 \l 0"2"}. Nothing contained in this Agreement obligates the City (or any officer, agent, department, commission or similar component of City) (a) to approve any rezoning or to grant any other land use approval or any other municipal approval or (b) to approve any development plan or to issue any building or construction permits for any plan or construction that is not in conformity with Applicable Law, including, without limitation, City's code, ordinances and regulations.

112.16 **No Personal Liability of Officers**{tc ""11.16NoPersonalLiabilityofOfficers"" \f 67 \l 0"2"}. This Agreement is made by officers, members or other authorized representatives of the parties hereto, solely as officers, members or representatives of such parties and not in their individual capacities. No trustee, director, officer, employee, beneficiary, member or agent of the





parties to this Agreement shall be personally liable in any manner to any extent under, or in connection with, this Agreement or the obligations reflected therein.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]



IN WITNESS WHEREOF, the duly authorized representatives of the parties have caused this Agreement to be executed and delivered as of the date and year first above written.

**CITY OF ATLANTA, GEORGIA**

(SEAL)

ATTEST:

\_\_\_\_\_  
Secretary/Assistant Secretary

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATLANTA DEVELOPMENT AUTHORITY**

(SEAL)

ATTEST:

\_\_\_\_\_  
Secretary / Assistant Secretary

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

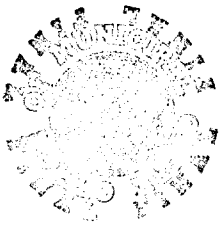
**DOWNTOWN DEVELOPMENT AUTHORITY**

ATTEST:

\_\_\_\_\_  
Secretary / Assistant Secretary

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[SIGNATURES CONTINUED ON FOLLOWING PAGE]



**DEVELOPER:**

**ATLANTIC STATION, L.L.C.,** a Delaware  
limited liability company

By: Jacoby Atlantic Redevelopment, L.L.C.,  
a Georgia limited liability company, its  
manager

By: \_\_\_\_\_  
James F. Jacoby, President

862235v4

01- R-0973

(Do Not Write Above This Line)

A RESOLUTION

BY:

*[Signature]*

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A DEVELOPMENT AGREEMENT WITH THE ATLANTA DEVELOPMENT AUTHORITY AND ATLANTIC STATION, L.L.C. FOR THE PURPOSE OF IMPLEMENTING THE ATLANTIC STEEL REDEVELOPMENT PLAN AND TAX ALLOCATION DISTRICT; AND FOR OTHER PURPOSES.

APPROVED BY:

ADOPTED BY  
JUL 16 2001

COUNCIL

SUSAN PEASE LANGFORD  
CITY ATTORNEY

- ☐ CONSENT REFER  
☐ REGULAR REPORT REFER  
☐ ADVERTISE & REFER  
☐ 1st ADOPT 2nd READ & REFER  
☒ PERSONAL PAPER REFER

Date Referred

6/18/01

Referred To:

CD/HR

Date Referred

Referred To:

Date Referred

Referred To:

First Reading

Committee \_\_\_\_\_  
Date \_\_\_\_\_  
Chair \_\_\_\_\_  
Referred to \_\_\_\_\_

Committee	_____
Date	6/27/01
Chair	_____
Action:	_____
Fav, Adv, Hold (see rev. side)	_____
Other:	_____
Members	_____
Refer To	_____

Committee	_____
Date	7/11/01
Chair	_____
Action:	Consent
Fav, Adv, Hold (see rev. side)	As amended
Other:	_____
Members	_____
Refer To	_____

FINAL COUNCIL ACTION

- ☐ 2nd ☐ 1st & 2nd ☐ 3rd  
Readings  
☐ Consent ☐ V Vote ☒ RC Vote

CERTIFIED

CERTIFIED

JUL 16 2001

ATLANTA CITY COUNCIL PRESIDENT

*[Signature]*

CERTIFIED

JUL 16 2001

*[Signature]*  
MUNICIPAL CLERK

MAYOR'S ACTION

APPROVED

JUL 24 2001

MAYOR

*[Signature]*

RCS# 3020  
7/16/01  
6:12 PM

Atlanta City Council

Regular Session

01-R-0973      Development Agree. with ADA & Atlantic  
Station, LLC for Atlantic Steel TAD/Plan  
ADOPT

YEAS: 13  
NAYS: 0  
ABSTENTIONS: 0  
NOT VOTING: 2  
EXCUSED: 0  
ABSENT 1

Y McCarty	Y Dorsey	Y Moore	Y Thomas
Y Starnes	NV Wooldard	Y Martin	Y Emmons
Y Bond	B Morris	Y Maddox	Y Alexander
Y Winslow	Y Muller	Y Boazman	NV Pitts

01-R-0973